



Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

50 YEARS OF FUN!

(972) 450-7000

FAX (972) 450-7043

AGENDA

REGULAR MEETING OF THE CITY COUNCIL

AUGUST 10, 2004

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

REGULAR SESSION

Item #R1 – Consideration of Old Business

Item #R2 – Consent Agenda

CONSENT AGENDA

#2a – Approval of the Minutes for the July 27, 2004 Council Meeting.

#2b – Approval of a 9-1-1 billing agreement with Vycera Communications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2c – Approval of a 9-1-1 billing agreement with Randy White Telecommunications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2d – Approval of a 9-1-1 billing agreement with QuickTel Communications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2e – Approval of a 9-1-1 billing agreement with Ernest Communications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2f – Approval of a 9-1-1 billing agreement with LightCore, a CenturyTel Company, which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2g – Approval of a 9-1-1 billing agreement with Buy-Tel Communications, Inc., which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2h – Approval of a 9-1-1 billing agreement with New Access Communications, which has a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission.

#2i – Consideration of approval and a Resolution authorizing the City Manager to enter into an interlocal agreement with the U.S. Communities Government Purchasing Alliance for an efficient and cost effective procurement process.

#2j – Consideration of approval of Office Depot as the Town’s supplier of office supplies through the U.S. Communities Government Purchasing Alliance.

#2k – Consideration of approval of construction and authorization of final payment in the amount of \$2,086.50 to Illuminations by Greenlee for the completion of the landscape lighting in the Oaks North subdivision common areas.

#2l – Consideration of a Resolution approving the amendment of a contract in an amount not to exceed \$30,000.00 with DCC Inc. for display fountain and waterfall pumping system maintenance.

#2m – Consideration of approval of construction and authorization of final payment in the amount of \$24,375.22 to Jim Bowman Construction Company, L.P., for the Airport Parkway Realignment.

#2n – Consideration of a Resolution approving a Change Order in the amount of \$55,049.90 for the construction of Spectrum Drive North/South Extension Project.

#2o – Consideration of approval of award of bid and Resolution authorizing the City Manager to enter into a contract in the amount of \$67,724.50 with Insituform Technologies for the trenchless internal lining of sanitary sewers along Westgrove Drive from Addison Road to Dallas Parkway.

#2p – Consideration of a Resolution authorizing the City Manager to enter into an Interlocal Agreement with the City of Dallas for the design and installation of water main improvements related to the Arapaho Road, Phase III project.

Item #R3 – Presentation of a dedication placard honoring the Korean War Veterans.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Janice Kelly

Item #R4 – Presentation of the Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award to the Town of Addison for the fiscal year beginning October 1, 2003.

Attachment:

1. Council Agenda Item Overview

Item #R5 – Appointment of Mayor Pro Tempore and Deputy Mayor Pro Tempore.

Item #R6 – Appointment of members to the Addison Visioning Committee.

Item #R7 – Consideration of approval of members to the 2004-2005 class of Leadership Metrocrest.

Item #R8 – **PUBLIC HEARING** and consideration of an Ordinance approving development plans for a bank with drive-through facilities, located in an existing Planned Development district (#459), located at 4100 Belt Line Road, on application from Washington Mutual, represented by Mr. Jason Sheets of Design Forum Architects.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on June 17, 2004, voted to recommend approval of the request for development plans for a bank, subject to no conditions.

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott,
Mellow

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R9 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located in the Addison Walk Shopping Center at 5000 Belt Line Road, Suite 300, on application from Baker Bros. Deli, represented by Mr. Brian Fletcher.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 5, 2004, voted to recommend approval of the request for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

1. The landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.
2. The applicant shall not use any terms, including the term “bar”, “tavern”, or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R10 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 100, on application from Buffalo Wild Wings, represented by Mr. Joel D. Rich, Attorney at Law.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 5, 2004, voted to recommend approval of the request for an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to no conditions.

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R11 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 15175 Quorum Drive, on application from Arthur's Restaurant, represented by Mr. Mohsen Heidari.

Attachments:

1. Docket Map
2. Staff Report
3. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on August 5, 2004, voted to recommend approval of the request

for an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

1. The staff recommends the applicant be required to finish this new building with the same brick and roofing materials that are on the existing restaurant.
2. Any dead or missing landscaping must be replaced before a Certificate of Occupancy is issued for the new building.
3. The dumpster enclosure must be reconstructed out of the same brick as the new building. It must be large enough to contain all refuse containers, and it shall have a gate on the front. The new dumpster enclosure shall be completed prior to the issuance of a Certificate of Occupancy for the new office building.
4. All mechanical equipment on the new building shall be completely screened from view. The screening material shall be architecturally compatible to the building, and the Building Official shall make the determination of "architecturally compatible".

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow

Voting Nay: None

Absent: None

Administrative Recommendation:

Administration recommends approval.

Item #R12 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-167, Government Sign, on application from Outer Marker, LLC, located at 16101 Addison Road.

Attachments:

1. Staff Report
2. Memorandum from Lynn Chandler
3. Application
4. Plan

Administrative Recommendation:

Administration recommends denial.

Item #R13 – **PUBLIC HEARING** and consideration of an Ordinance for regulating the fees that may be charged for non-consent tows within the Town of Addison by Tow Truck Service Companies.

Attachments:

1. Council Agenda Item Overview
2. Ordinance
3. Bid Sheet
4. Letter from Virginia Jameson
5. Memorandum from Joey Coates

Administrative Recommendation:

Administration recommends approval.

Item #R14 – Consideration of a Resolution authorizing the City Manager to enter into an agreement with Museums+more LLC to assist the Town in conducting a Strategic Assessment of the proposed Cavanaugh Flight Museum development.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Lea Dunn
3. Agreement

Administrative Recommendation:

Administration recommends approval.

Item #R15 – Consideration of a Resolution of the Town of Addison directing TXU Electric Delivery Company to file certain information with the Town of Addison as set forth herein; setting a procedural schedule for the gathering and review of necessary information in connection therewith; setting dates for the filing of the city's analysis of the company's filing and the company's rebuttal to such analysis; ratifying the hiring of legal counsel and consultants; reserving the right to require the reimbursement of the city's rate case expenses; setting a public hearing for the purposes of determining if the existing rates of TXU Electric Delivery company are unreasonable or in any way in violation of any provision of law and the determination by the city of just and reasonable rates to be charged by TXU Electric Delivery Company; providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R16 – Consideration of a Resolution regarding certain matters pertaining to a Ground Lease at 4575 Claire Chennault Drive on Addison Airport between the Town, as Landlord, and Aquila Leasing, Inc. as Tenant (Assignor), and C.C. Hangar, L.P. (Assignee). C.C. Hangar, L.P. requests for Landlord approval of (i) First Amendment to Ground Lease, (ii) Proposed Structural Improvements, and (iii) Creation of a Leasehold Mortgage.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Lisa Pyles
3. Exhibit 1 – Map
4. Exhibit 2 – First Amendment and Ground Lease
5. Exhibit 3 – Estoppel Letter
6. Exhibit 4 – Propose Site Plan
7. Exhibit 5 – Vigor Properties, Inc. Lease Guaranty

Administrative Recommendation:

Administration recommends approval.

Item #R17 – Consideration of award of bid and a Resolution authorizing the City Manager to enter into a contract in the amount of \$108,565.00 with Texas Standard Construction for the paving repair and storm sewer modifications for the Fuel Truck Roadway.

Attachments:

1. Council Agenda Item Overview
2. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

Item #R18 – Consideration of approval and authorization to transfer \$177,405.16 from the DART Local Assistance Program/Congestion Management System (LAP/CMS) funds from the Addison Road Widening and Cotton Belt Railroad Quiet Zone projects to the Arapaho Road Phase III and Town Wide Signals Upgrade projects and the Spectrum Drive Project.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval

Item #R19 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$168,552.73 with HNTB Corporation for the design and inspection of the resurfacing of Belt Line Road from Dallas Parkway to Marsh Lane.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval

Item #R20 – Consideration of a Resolution authorizing the City Manager to enter into an agreement in the amount of \$282,948.00 with TXU Electric Delivery for the relocation and installation of electrical services in connection with the extension of Arapaho Road, Phase III.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Mr. James Davis
3. Agreement

Administrative Recommendation:

Administration recommends approval

Item #R21 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$196,534.54 with Kimley-Horn and Associates for professional engineering services for the upgrade of the Town's traffic signal system software, hardware, and communications infrastructure.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval

Item #R22 – Consideration of a Resolution authorizing the City Manager to enter into a contract in an amount not to exceed \$55,964.00 with HNTB Corporation for construction administration and bridge shop drawing review on Arapaho Road, Phase III from Surveyor Boulevard to Addison Road.

Attachments:

1. Council Agenda Item Overview
2. Contract

Administrative Recommendation:

Administration recommends approval

Adjourn Meeting

Posted 5:00 p.m.
August 5, 2004
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

July 27, 2004
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Braun, Chow, Hirsch, Niemann, Silver,
Turner

Absent: None

Item #R1 – Consideration of Old Business

Mayor Pro Tempore Silver presented patches of Civil Air Patrol.

Item #R2 – Consent Agenda

Item #2a – Approval of the Minutes for the June 21, 2004, June 22, 2004 and June 26, 2004 Council Meetings.

Councilmember Niemann moved to duly approve the Minutes of the June 21, 2004 and the June 26, 2004 Council meetings as written. The June 22, 2004 Minutes was also approved with a correction to delete condition #2 from Item #R4. Councilmember Hirsch seconded. The motion carried.

Voting Aye: Wheeler, Braun, Chow, Hirsch, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R3 – Discussion of appointment of Assistant City Secretary.

Mario Canizares was appointed as Assistant City Secretary.

Item #R4 – Selection of candidates for the 2004-2005 class of Leadership Metrocrest.

The City Council will submit names of candidates. Recommendation and approval of candidates will be at the August 10, 2004 Council meeting.

The City Council recessed and reconvened in the Town Hall upstairs conference room for presentation of Item #R5.

Item #R5 – Presentation of Department's Quarterly Operation Reports.

No action taken.

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by Vyera Communications, Inc ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60365 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Vycera Communications, Inc
12750 High Bluff Dr # 200
San Diego, CA 92130

Attention: Hoa Duong

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010

Attention: Elaine Difiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company



(Printed Name)

THALIA GIETZEN
(Printed Name)

(Title)

CFO
(Title)

Date: _____

Date: _____ 4/30/04 _____

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison
Finance Department/Collections
Elaine Difiglia, Manager
(972) 450-7080

PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Name: Raul, Miramontes
Title: Order Processing
Phone #: 858 792 2400 x 1125

Company Management

Name: Christ Bacquet
Title: Controller
Phone #: 858 792 2400 x 1131

Company Billing

Name: Hoa Duong
Title: Tax Accountant
Phone #: 858 - 792 - 2400 x 1315

Council Agenda Item: #2c

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by White Telecommunications, Inc. ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60484 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Randy White Telecommunications, Inc.

P.O. Box 796845

Dallas, Texas 75379

Attention: Lori W. Sanchez

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.

P. O. Box 9010

Addison, TX 75001-9010

Attention: Elaine Difiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

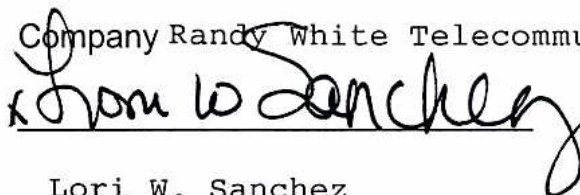
6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company Randy White Telecommunicaitons, Inc.



(Printed Name)

Lori W. Sanchez

(Printed Name)

(Title)

President

(Title)

Date: _____

Date: April 27, 2004

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

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Town of Addison
Finance Department/Collections
Elaine DiFiglia, Manager
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PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Tiffany Roper
Customer Service Manager
(972) 588-2100

Company Management

Lori W. Sanchez
President
(972) 588-2100

Company Billing

Rox Ann Ybarra
E.A.
(972) 588-2100

Council Agenda Item: #2d

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by Quick-Tel ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60170 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Quick-Tel Communications
P.O. Box 1220
1703*16th St.
Bridgeport, TX 77642
Attention: Laura Bosley

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010
Attention: Elaine Difiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company Quick-Tel Communications
Craig Bolin

(Printed Name)

Craig Bolin
(Printed Name)
President
(Title)

(Title)

Date: _____

Date: 3-31-04

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison
Finance Department/Collections
Elaine Difiglia, Manager
(972) 450-7080

PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Name: Craig Bolin
Title: President
Phone #: 940-683-1853

Company Management

Name: Laura Bosley
Title: Director of Administration
Phone #: 940-683-1853

Company Billing

Name: Laura Bosley
Title: Director of Administration
Phone #: 940-683-1853

Council Agenda Item: #2e

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by Ernest Communications, Inc. ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60207 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Ernest Communications, Inc
5275 Triangle Pkwy.
Suite 150
Norcross GA 30092
Attention: Paul Masters

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010
Attention: Elaine DiFiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

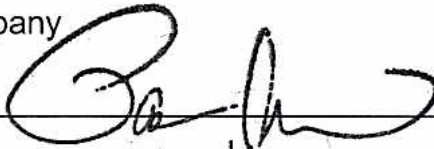
Town of Addison, Texas

(Printed Name)

(Title)

Date: _____

Company

_____ 

Paul Masters
(Printed Name)

President
(Title)

Date: 3-22-04

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison
Finance Department/Collections
Elaine Difiglia, Manager
(972) 450-7080

PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Name: Steve Reynolds
Title: Dir. of Provisioning & Carrier Relations
Phone #: 770-242-9069

Company Mangement

Name: Paul masters
Title: President
Phone #: 770-242-9069

Company Billing

Name: Darlene Thaxton
Title: Dir. of Billing
Phone #: 770-249-9069

Council Agenda Item: #2f

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by ~~CenturyTel Fiber Company, LLC~~ Albia LightCore ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60214 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Lightcore, a CenturyTel Company
14507 N. Outer Forty Rd., Ste. 500
Chesterfield, MO 63017

Attention: General Counsel

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010
Attention: Elaine Difiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company

(Printed Name)

Daniel A. Davis
(Printed Name)

(Title)

Sr. Vice President
(Title)

Date: _____

Date: 6/1/04

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison
Finance Department/Collections
Elaine DiFiglia, Manager
(972) 450-7080

PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Name: Kristine Kropp
Title: Exec. Dir - Customer Ops
Phone #: 314-880-1860

Company Management

Name: Steve Hendrix
Title: Sr. Vice President
Phone #: 314-880-1646

Company Billing

Name: Andy Whipple
Title: CFO
Phone #: 314-~~880~~
253-6623

Council Agenda Item: #2g

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by Bey-Tex Communications Inc ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number ¹⁸⁴⁴⁶~~346460154~~ from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

fee to the Town of Addison as provided in the Applicable Laws and reflected in Attachment No. 1.

Company shall remit the appropriate fees and/or, if applicable, surcharge per the rules and schedules established by the Comptroller of Public Accounts, and Texas Health and Safety Code Sections 771.071, 771.073, and 771.077. At all times Company shall be responsible for the accuracy of the report. From time to time, the Commission on State Emergency Communications ("CSEC") may change the 9-1-1 emergency service fee. Such changes shall be communicated to Company for changes in Company's collection and remittance of 9-1-1 emergency service fee, according to the provisions of the Applicable Laws. CSEC or the Comptroller shall notify Company of any change Company must make in Company's collection and remittance of 9-1-1 emergency service fee with sufficient advance time, but not to exceed 91 days before the date the change takes effect, to permit Company's billing system to comply timely with the change. Furthermore, also pursuant to the Applicable Laws, Company may retain an administrative fee equal to one percent (1%) of the fees Company collects.

3. This service agreement shall be in full force and effect so long as Company's status is strictly that of a reseller and the Company does not use any facilities. Company shall inform the 9-1-1 Entity of any changes or expansion of its service, or in the use of facilities, in its calling area or service territory 60 days in advance of such change or expansion.

4. Any notice required or permitted to be given by the 9-1-1 Entity to Company under this agreement shall be mailed to Company certified or registered U. S. Mail, postage prepaid, return receipt requested to the following address:

(Name and Address of Company)

Buy-Tel Communications, Inc
3024 B Shawnee TRAIL
PO Box 136578
Fort Worth TX 76136
Attention: Cheryl Austin

Any notice required or permitted to be given by the Company to 9-1-1 Entity under this agreement shall be mailed by certified or registered U. S. Mail, postage prepaid, return receipt requested or delivered to the following address:

Town of Addison Finance Dept.
P. O. Box 9010
Addison, TX 75001-9010
Attention: Elaine Difiglia, Collections Manager

5. The Company and the 9-1-1 Entity will provide and periodically update a contact list. The contact list is found in Attachment No. 2.

6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company

(Printed Name)

Cheryl Austin

(Printed Name)

(Title)

Operations Manager

(Title)

Date: _____

Date: 7-15-07

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison
Finance Department/Collections
Elaine Difiglia, Manager
(972) 450-7080

PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Name: Cheryl Austin
Title: Operations Manager
Phone #: 817-238-6577 X 4151

Company Management

Name: Clyde Austin
Title: President
Phone #: 817-238-6577 X 4116

Company Billing

Name: Cheryl Austin
Title: Operations Manager
Phone #: 817-238-6577 X 4151

Council Agenda Item: #2h

SUMMARY:

Council approval is requested of 9-1-1 billing agreements with the following communication carriers which have received a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission:

Vycera Communications, Inc.

Ernest Communications, Inc.

Randy White Telecommunications, Inc.

LightCore, a CenturyTel Company

QuickTel Communications, Inc.

Buy-Tel Communications, Inc.

New Access Communications

FINANCIAL IMPACT:

No financial impact to the Town will be realized, as these carriers are currently submitting access fees to the Town. 9-1-1 fees are generating approximately \$580,000 each year. The revenue is collected by the telephone companies from their customers. The fee of the base rate approximates 62 cents on a monthly single-family residential bill. Theoretically, any revenue generated from these billing agreements will simply replace the fees the Town would have received from Southwestern Bell.

BACKGROUND:

Section 82.202 of the Town's code of ordinances requires that all 9-1-1 carriers establish an agreement with us. Many carriers are operating without a formal agreement, and we are attempting to document each carrier. The carriers listed above have submitted signed 9-1-1 billing agreements developed by the Town attorney (one copy attached for information). With the addition of the above five companies, Addison will have approximately 40 current 9-1-1 contracts.

RECOMMENDATION:

It is recommended council authorize the city manager to enter into 9-1-1 agreements with the providers listed above.

Attachment

9-1-1 EMERGENCY SERVICE AGREEMENT

This 9-1-1 Emergency Service Agreement ("Agreement") establishes the rates, terms, and conditions for 9-1-1 emergency service interconnection by New Access Communications LLC ("Company") with the Town of Addison 9-1-1 Emergency Network ("9-1-1 Entity") (collectively "Parties").

WHEREAS, the Texas Legislature and the United States Congress have authorized the provision of telecommunications service in the local marketplace by service suppliers other than the holders of certificates of convenience and necessity ("CCN"); and,

WHEREAS a CCN holder is the incumbent local exchange company that holds a certificate of convenience and necessity granted by the Public Utility Commission of Texas ("PUC") on September 1, 1995, for each service area(s) within the territory of the 9-1-1 Entity; and,

WHEREAS, Company is a holder of a service provider certificate of operating authority that has received certificate number 60458 from the PUC and, therefore, a service supplier and a service provider of local telecommunications service ("service supplier") pursuant to Chapter 771 or Chapter 772 of the Texas Health and Safety Code, §§ 771.001 *et seq.*, 772.001 *et seq.*, or other applicable law pertaining to home rule cities (collectively "the Applicable Laws"), as amended, that must provide 9-1-1 emergency service to that portion of the Company's service area located within the territory of the 9-1-1 Entity; and,

WHEREAS, the 9-1-1 Entity is a political subdivision of the State of Texas established pursuant to the Applicable Laws and must interconnect service suppliers into the 9-1-1 emergency service area served by the 9-1-1 Entity; and,

WHEREAS, this 9-1-1 emergency service interconnection must protect, maintain, and further the high quality, standards-based 9-1-1 emergency service and not inappropriately and unreasonably increase the costs of 9-1-1 emergency service to the 9-1-1 Entity;

NOW, THEREFORE, in consideration of the listed mutual promises and benefits, the Parties agree as follows:

1. Company must comply with all provisions of the Applicable Laws and any requirements implementing or interpreting the Applicable Laws promulgated by the 9-1-1 Entity pursuant to the authority vested in the 9-1-1 Entity.
2. Company shall bill, collect, and remit the appropriate 9-1-1 emergency service

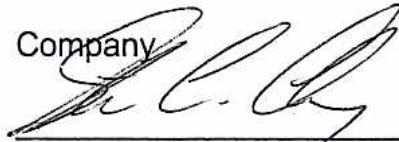
6. The 9-1-1 Entity shall not impose on Company any requirement, service, feature, standard, or rate that is not required of the incumbent local exchange company CCN holder.

7. This Agreement, together with all attachments, sets forth the entire understanding of the Parties. No representation, promise, or statement of intention has been made by either Party that is not embodied herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the last date signed below.

Town of Addison, Texas

Company



(Printed Name)

Steven C. Clay

(Printed Name)

(Title)

Carrier Services Pres.

(Title)

Date: _____

Date: 7/20/04

ATTACHMENT NO. 2

9-1-1 ENTITY ESCALATION & CONTACT LIST

Database & Billing

Town of Addison
Finance Department/Collections
Elaine Difiglia, Manager
(972) 450-7080

PSAP Operations

Janet Cowart
Communications Supervisor
Town of Addison Police Department
(972) 450-7159

9-1-1 Entity Management

Joni Ramsey
Manager, Public Safety Communications
Town of Addison Police Department
(972) 450-7122

Company Service Order

Name: ~~Boys~~
Title:
Phone #:

Company Management

Name: Steven C. Clay
Title: President Carrier Services
Phone #: 612-256-0078

Company Billing

Name: DWAYNE JANKKE
Title:
Phone #: 612-256-0078

Council Agenda Item: #2i

SUMMARY:

Staff requests approval of an interlocal agreement with the U.S. Communities Government Purchasing Alliance.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

BACKGROUND:

The U.S. Communities Government Purchasing Alliance (U.S. Communities) is a national cooperative purchasing alliance for local governments including cities, counties, special districts, schools, non-profit agencies and state agencies. U.S. Communities is sponsored by the National Institute for Governmental Purchasing, the National Association of Counties, and the National League of Cities. The Town of Addison is eligible to become a member of U.S. Communities pursuant to Texas Government Code, Chapter 791.025 and Texas Local Government Code, Subchapter F, Section 271.102. There are no costs or fees required to join the U.S. Communities Government Purchasing Alliance.

U.S. Communities was established to leverage the collective purchasing power of local governments by creating a more efficient and cost effective procurement process. By entering into an interlocal agreement with U.S. Communities, the Town of Addison will be able to utilize the bids awarded to other members of the purchasing cooperative. In doing so, the Town will be able to purchase goods and services more efficiently since the bidding process will have already been completed by U.S. Communities. In addition, the Town will also achieve a pricing advantage since the scale of the awards is typically much larger than what Addison would purchase individually. The following local cities are currently members of the U.S. Communities Government Purchasing Alliance: City of Richardson, City of Plano, City of Garland, City of Allen, City of McKinney, City of Frisco and the City of Dallas.

RECOMMENDATION:

Staff recommends approval of the attached resolution with U.S. Communities.

RESOLUTION NO. R _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS, AUTHORIZING AN INTERLOCAL AGREEMENT
AND MEMBERSHIP WITH U.S. COMMUNITIES GOVERNMENT
PURCHASING ALLIANCE FOR PURPOSES OF THE PURCHASE OF
GOODS AND SERVICES; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Town of Addison and U.S. Communities Government Purchasing Alliance desire to enter into an interlocal agreement for the purpose of cooperative purchasing; and

WHEREAS, The Town of Addison is eligible to be a member of the U.S. Communities Government Purchasing Alliance for cooperative purchasing pursuant to Texas Government Code, Chapter 791.025 and Texas Local Government Code, Subchapter F, Section 271.02; and

WHEREAS, the Town of Addison and U.S. Communities desire to comply with the requirements and formalities of the Intergovernmental Act and desire to conserve resources and reduce procurement costs, as well as desire to improve the efficiency, effectiveness and economy of the procurement of necessary products. Now, Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS:**

Section 1. That the interlocal agreement and membership with U.S. Communities Government Purchasing Alliance for the purchase of goods and services is hereby approved.

Section 2. The City Manager is hereby authorized to do all things necessary to execute and enter into this interlocal agreement.

Section 3. That this Resolution shall be in full force effective from and after its passage and approval.

PASSED AND APPROVED this 10th day of August, 2004.

Scott Wheeler, Mayor
Town of Addison

ATTEST:

APPROVED AS TO FORM:

Carmen Moran, City Secretary

Ken Dippel, City Attorney

RESOLUTION NO. R _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS, AUTHORIZING AN INTERLOCAL AGREEMENT
AND MEMBERSHIP WITH U.S. COMMUNITIES GOVERNMENT
PURCHASING ALLIANCE FOR PURPOSES OF THE PURCHASE OF
GOODS AND SERVICES; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Town of Addison and U.S. Communities Government Purchasing Alliance desire to enter into an interlocal agreement for the purpose of cooperative purchasing; and

WHEREAS, The Town of Addison is eligible to be a member of the U.S. Communities Government Purchasing Alliance for cooperative purchasing pursuant to Texas Government Code, Chapter 791.025 and Texas Local Government Code, Subchapter F, Section 271.02; and

WHEREAS, the Town of Addison and U.S. Communities desire to comply with the requirements and formalities of the Intergovernmental Act and desire to conserve resources and reduce procurement costs, as well as desire to improve the efficiency, effectiveness and economy of the procurement of necessary products. Now, Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF
ADDISON, TEXAS:**

Section 1. That the interlocal agreement and membership with U.S. Communities Government Purchasing Alliance for the purchase of goods and services is hereby approved.

Section 2. The City Manager is hereby authorized to do all things necessary to execute and enter into this interlocal agreement.

Section 3. That this Resolution shall be in full force effective from and after its passage and approval.

PASSED AND APPROVED this 10th day of August, 2004.

Scott Wheeler, Mayor
Town of Addison

ATTEST:

APPROVED AS TO FORM:

Carmen Moran, City Secretary

Ken Dippel, City Attorney

Council Agenda Item: #2j

SUMMARY:

Staff requests approval of an office supplies bid with Office Depot.

FINANCIAL IMPACT:

Budgeted Expense: \$200,000*

* In FY 04, approximately \$200,000 is budgeted for office supplies in all funds.

BACKGROUND:

The Town of Addison has purchased office supplies from Boise Cascade since 1997 under separate agreements. The current agreement has now expired, and staff recommends utilizing a bid for office supplies developed by the U.S. Communities Government Purchasing Alliance. State statute exempts the Town from formal bid requirements when purchasing through an interlocal agreement with an organization such as U.S. Communities Government Purchasing Alliance.

In March 2001, a bid for office supplies was released by the U.S. Communities Government Purchasing Alliance with Los Angeles County as the lead public agency. Five companies responded to the bid (Office Depot, Boise Cascade, Staples, Corporate Express, and Cado). Office Depot ranked number one overall for price and service and received a three-year national contract with two one-year extensions. The national contract is estimated at \$250 million per year.

The Office Depot contract includes the following provisions:

- ✓ Purchase over 300 high use items at up to 85% off of list price
- ✓ Purchase approximately 4,000 frequently ordered items from a catalog at up to 63% off of list price
- ✓ Purchase the remainder of the Office Depot catalog at up to 45% off of list price
- ✓ If 80% of orders are placed through the Internet, Office Depot will issue a rebate equal to 1% of total sales volume to the Town.
- ✓ Office Depot provides next-business day delivery.

RECOMMENDATION:

Staff recommends approval of purchase of office supplies to Office Depot through the U.S. Communities Government Purchasing Alliance.

Council Agenda Item: #2k

SUMMARY:

We recommend that the Council approve final payment totaling \$2,086.50 to Illuminations by Greenlee for the completion of the landscape lighting in the Oaks North subdivision common areas.

FINANCIAL IMPACT:

Budgeted Amount: **\$50,000.00**
Cost: **\$45,365.00**

The Town and the Oaks North Homeowners Association (ONHA) shared half of the cost for the landscape lighting installation. The Town's share of \$22,682.50 was budgeted in the 2003-2004 park operations budget.

BACKGROUND:

The work consisted of installing 78 directional down light fixtures in trees, and 62 ground-mounted up lights, including all associated electrical equipment on eleven common areas. The Belt Line Road/Oaks North Drive entry median and the Montfort/Paladium Drive entry median were included.

The parks department's lighting maintenance contractor will be responsible for maintaining the system. The annual electricity usage is estimated to cost in the neighborhood of \$3,600, and the annual light maintenance and repair cost is estimated at \$1,400.00.

RECOMMENDATION:

The contractor completed the work in a satisfactory manner. The ONHA and parks department staff are satisfied with the work; therefore, staff recommends approval.

Council Agenda Item: #21

SUMMARY:

Staff is recommending that Council approve the amendment of an existing contract with DCC Inc. not to exceed \$30,000 for display fountain and waterfall pumping system maintenance.

FINANCIAL IMPACT:

Budgeted Amount: **\$60,000 – Hotel Fund – Special Events Budget**
 \$10,000 – General Fund – Parks Operations Budget

Cost: **Not to Exceed \$30,000**

If over budget or not budgeted, what is the budget impact? N/A

Staff budgeted \$60,000 in the Hotel Fund – Special Events budget for the cost of annual maintenance for the Addison Circle Park interactive and display fountain. The company that did the fountain installation in Addison Circle Park provided this cost estimate. The parks operations budget includes \$10,000 to cover the cost of all remaining park fountains and waterfall systems.

BACKGROUND:

The scope of work under this contract consists of weekly cleaning of fountains to maintain proper water chemistry and maintenance of pumping/filtering systems to keep display fountains and waterfalls functioning smoothly. The fountains maintained under this contract are as follows:

Addison Circle Park – Interactive Fountain and Display Fountain;
Quorum Park – Two Display Fountains;
Bosque Park – One Display Fountain;
Winnwood Park/Gazebo – One Waterfall and One Display Fountain;
Town Hall and Finance Building – One Waterfall and One Display Fountain;
Midway Meadows – One Display Fountain;
Les Lacs Lake – Two Waterfalls and One Display Fountain.

Sealed bids were received on September 2, 2003 for award of an annual maintenance contract. The lowest bidder, DCC Inc. submitted a bid totaling \$18,480, with the lowest hourly repair rate for equipment repairs at \$45 per hour. A bid tabulation form is attached.

The contract was not submitted for the Council's review and approval because it did not exceed \$25,000 approval threshold. Due to the higher than expected frequency of cleaning and maintenance required on the Addison Circle Park fountains, it is probable that the contract will exceed \$25,000 by the end September 2004; thus, staff is submitting it for approval to adjust the amount up to \$30,000.

RECOMMENDATION:

Staff recommends approval. The scope of work under this contract has been adjusted to increase the weekly maintenance based on this year's experience with the Addison Circle Park fountain. The contract is presently out for re-bidding inclusive of the increased scope of services, and staff will bring a new contract forward in September for the Council's review and approval.

**Fountain and Waterfall Maintenance
Bid NO 03-27**

DUE: September 2, 2003

2:00 PM

BIDDER	SIGNED	Grand Total	Labor for misc. pumps,lights \$/man hour	Labor additional site \$/man hour	Parts for Misc Fountain Repair %
D.C.C. Inc.	y	\$18,480.00	\$45.00	\$30.00	20%
Palm Springs Pool Svc	y	\$26,820.00	\$55.00	\$30.00	67%
Greenscape Pump Svcs	y	\$186,114.00	\$88.00	\$60.00	40%

Minok Suh

Minok Suh, Purchasing Coordinator

Ann Milbery

Witness

Council Agenda Item: #2m

SUMMARY:

This item is for final payment to Jim Bowman Construction Company, L.P., in the amount of \$24,375.22, for the Airport Parkway Realignment Project.

FINANCIAL IMPACT:

Budgeted Amount: \$285,000 (Including Engineering)

Final Construction Cost: \$215,991.65

Funding Source: Airport Fund 2004 Budget

BACKGROUND:

In conjunction with the proposed Frito Lay Improvements at the Addison Airport, a portion of Airport Parkway, currently west of Addison Road and south of the former airport administration building, had to be realigned. The new Frito Lay facilities are located within the existing alignment of the roadway. A contract was awarded to Jim Bowman Construction Company, L.P. for construction of this project. The original contract price for these improvements was \$223,820.00. The final construction cost was \$215,991.65, which represents \$7,828.35 decrease from the original contract amount. In addition, this project included an incentive/disincentive provision, whereby, the contractor would be awarded \$250.00 per day for early completion of the project to a maximum award of \$5,000. However, the project was completed in the 85 days allotted, and the contractor did not qualify for any incentive award or disincentive penalty. The contractor has submitted his Affidavit of Bills Paid, Consent of Surety Company to Final Payment, and One Year Maintenance Bond.

RECOMMENDATION:

Staff recommends that Council authorize final payment to Jim Bowman Construction Company, L.P., in the amount of \$24,375.22, for the Airport Parkway Realignment Project.

MONTHLY INVOICE

JIM BOWMAN CONSTRUCTION COMPANY, L.P.

1111 Summit Ave., Suite 1

Plano, Texas 75074

(972) 423-1313

Project Name: Job #630 - Airport Parkway Re-Alignment
 Type of Work: Street Construction
 Estimate Period: May 1, 2004 to June 30, 2004

Estimate No. 6 & Final
 Contract Date October 28, 2003
 Orig. Contract Amt. \$223,820.00
 Bid # 03-31

Payable To: Jim Bowman Construction Co., L.P.
 1111 Summit Ave., Suite 1
 Plano, Texas 75074

Item	Description	Unit of Measure	Contract Quantity	Work Done This Month	Total Work Done on Contract	Contract Price	Amount
101	Mobilization	LS	1		1.00	19,600.00	\$19,600.00
102	R.O.W. Prep	LS	1		1.00	5,000.00	\$5,000.00
103	Full Depth Saw Cut	LF	755		721.00	1.50	\$1,081.50
104	Remove Existing Pavement with Curb	SY	1650		1769.48	9.50	\$16,810.06
105	Unclassified Street Excavation	CY	500		500.00	17.80	\$8,900.00
106	Embankment	CY	100		100.00	38.50	\$3,850.00
107	10" - 4000psi R.C. Pavement	SY	2800		2232.40	45.50	\$101,574.20
108	Furnish / Install 10-ft. Recessed Curb Inlet	EA	2		2.00	2,410.00	\$4,820.00
109	18" Cl. III R.C.P.	LF	108		113.00	48.00	\$5,424.00
110	Remove / Relocate Roadside Sign	EA	0				
111	15 MPH Speed Limit Sign (R2-1)	EA	2		2.00	225.00	\$450.00
112	Fire Lane Striping	LF	1100		1100.00	1.00	\$1,100.00
113	Solid Sod	SY	900			2.50	
114	F/I/M/Remove Silt Fence	LF	300		410.00	1.25	\$512.50
115	Inlet Protection (Drop)	EA	2			75.00	
116	Irrigation Conduit 4" SCH. 40 PVC	LF	114		115.00	6.00	\$690.00
117	F/I Security Gate with Acc. Control	LS	1		1.00	6,000.00	\$6,000.00
118	AOA Security Fence	LF	300	199.00	325.00	15.50	\$5,037.50
119	Remove Temporary Road	LS	1		1.00	2,500.00	\$2,500.00
120	Remove Security Fence	LF	195		145.00	5.00	\$725.00
121	12" Cl. III R.C.P.	LF	95		262.00	40.00	\$10,480.00
122	F/I/M/Remove 20-ft. Security Gate	EA	1			4,000.00	
123	2" SCH. 40 PVC Conduit	LF	600		285.00	3.58	\$1,020.30
124	30-ft. Street Light Pole Foundation	EA	4		1.00	715.00	\$715.00
125	Type "A" Gr. Mtd. Pull Box	EA	3		1.00	280.00	\$280.00
126	#8 AWG Insulated Cable	LF	660		600.00	1.25	\$750.00
127	Bare #8 AWG	LF	330		300.00	0.45	\$135.00
C.O.#1	Change Re-Bar Spacing	LS	1		1.00	1,890.00	\$1,890.00
C.O.#1	Add Expansion Joints	LS	1		1.00	460.00	\$460.00
C.O.#1	Add Lime Pellets	LS	1		1.00	5,940.00	\$5,940.00
C.O.#2	Security Gate Extras (As Revised)	LS	1		1.00	2,316.59	\$2,316.59
C.O.#3	Mow Strip	LS	1		1.00	6,000.00	\$6,000.00
C.O.#4	Electrical Service	LS	1		1.00	1,930.00	\$1,930.00

Approved
 Jim Bowman Construction Company, L.P.

By:

Total Amount Of Work Done \$215,991.65
 Less Retainage 0% \$0.00
 Other \$0.00
 Amount Payable on Contract \$215,991.65
 Less Previous Payments \$191,616.43
 Amount Due This Estimate \$24,375.22

Council Agenda Item: #2n

SUMMARY:

This item is for Council approval of Change Order No 2, in the amount of \$55,049.90, for the construction of Spectrum Drive North/South Extension Project.

FINANCIAL IMPACT:

Budgeted Amount: \$3,100,000

Change Order Cost: \$55,049.90

Source of Funds: \$2,600,000 from Bond Sale. Remaining amount from transfer of funds from Addison Road widening project.

BACKGROUND:

The Spectrum Drive North/South Extension Project was established as part of the Year 2000 General Obligation Bond Program. In December 2003, a construction contract was awarded to Site Concrete, Inc., in the amount of \$2,536,979.50, which is approximately \$563,000 under the budgeted amount. During the construction of these improvements, Public Works Department staff and the Contractor have identified several necessary field changes. Accordingly, a change order in the total amount of \$101,587.00 was prepared and approved by Council in March 2004. As the construction of Spectrum Drive proceeded, it was determined that a second change order, in the total amount of \$55,049.90, is also necessary to complete the project. This change order is the result of the following construction issues:

- Several signal and pedestrian poles required adjustments to anchor bolts, backplates and boring, in the amount of \$13,703.00.
- A portion of the existing concrete pavement on the south portion of the project requires removal and replacement to eliminate damaged and mis-aligned pavement, in the amount of \$4,938.00.
- The hand rail on the proposed retaining wall around the Millenium Bldg. drive must be extended for security and pedestrian safety. In addition, steep slopes on both sides of this retaining wall will be secured with a millsap stone wall and millsap stone steps, respectively, in the amount of \$19,870.00.
- In order to meet ADA construction requirements and match surrounding infrastructure, it was determined that additional brown brick was needed for border installation, in the amount of \$9,038.90.

- The Engineer did not adequately compensate for existing drainage patterns on the east and west sides of Spectrum Drive, at Airport Pkwy. As a result, additional drainage improvements were required, in the amount of \$7,500.00

The resulting total construction cost is increased to \$2,693,616.40. In addition, the installation of new street light poles along Spectrum Drive will cost \$319,700.00. The total project cost remains under the budgeted amount by approximately \$86,683.60.

RECOMMENDATION:

It is recommended that Council approve Change Order No. 2, in the amount of \$55,049.90, for the construction of the Spectrum Drive North/South Extension Project.

SITE CONCRETE, INC.

PROPOSAL

#2n-2

To: Town of Addison
16801 Westgrove Dr.
Addison, TX 75001

07/19/04
Site Job # 23-133
Addison Bid # 04-03

Attn: Steve Chutchian, PE. Town of Addison

We propose to furnish all labor, materials, and equipment necessary to construct, as an independent contractor, the following described work:

LOCATION: Spectrum Dr. Change Order #2

DESCRIPTION

Traffic:						
1	Vehicle Signal Sections w/ Backplates	APPROX.	43	EA	@	\$175.00 EA \$7,525.00
2	Vehicle Pole Anchor Bolts	APPROX.	148	EA	@	\$21.00 EA \$3,108.00
3	Pedestrian Pole Anchor Bolts	APPROX.	236	EA	@	\$7.50 EA \$1,770.00
4	Bore for Ped Lights on Arapaho Rd.	APPROX.	1	LS	@	\$1,300.00 LS \$1,300.00
Subtotal Traffic:						\$13,703.00
Paving for North Side of Railroad:						
1	8" Concrete Removal	APPROX.	66	SY	@	\$25.00 SY \$1,650.00
2	8" Concrete Pavement (No Lime)	APPROX.	66	SY	@	\$28.00 SY \$1,848.00
3	Additional 2" Conc. (Explorer Pipeline)	APPROX.	180	SY	@	\$8.00 SY \$1,440.00
Subtotal Paving North Side RR:						\$4,938.00
Retaining Wall:						
1	Additional Bike Rail	APPROX.	53	LF	@	\$100.00 LF \$5,300.00
2	Respace Previously Manufactured Rail	APPROX.	22	LF	@	\$35.00 LF \$770.00
3	Millsap Stairs	APPROX.	650	SF	@	\$12.00 SF \$7,800.00
4	Millsap Wall	APPROX.	500	SF	@	\$12.00 SF \$6,000.00
Subtotal Retaining Wall:						\$19,870.00
Brick Pavers:						
1	Return Autumn Haze 30 Bundles	APPROX.	1	LS	@	-\$7,125.00 LS -\$7,125.00
2	Delivery Fee	APPROX.	1	LS	@	\$1,800.00 LS \$1,800.00
3	Restocking Fee	APPROX.	1	LS	@	\$1,863.90 LS \$1,863.90
4	Acme Brown for Border Brick	APPROX.	1	LS	@	\$12,500.00 LS \$12,500.00
Subtotal Brick Pavers:						\$9,038.90

Storm Sewer:

1	10' Inlet (Airport Parkway)	APPROX.	1	EA	@	\$2,500.00 EA	\$2,500.00
2	3' x 3' drop inlet with 2' apron	APPROX.	1	EA	@	\$4,000.00 EA	\$4,000.00
3	Install 24" RCP into existing inlet	APPROX.	1	EA	@	\$1,000.00 EA	\$1,000.00
Subtotal Storm Sewer:							<u>\$7,500.00</u>

Total Change for Change Order #2: **\$55,049.90**


Note: This quote is based upon the Town keeping some of the brick for repairs.
The quantity can go up or down based upon the needs of the Town.
This does not factor in Rail along the sidewalk behind the Rail Road crossing guards.

ACCEPTED:

BY: _____

DATE: _____

BANK REF:



SITE CONCRETE, INC.
3340 ROY ORR BOULEVARD
GRAND PRAIRIE, TEXAS 75050-4207
972-313-0733 FAX #972-513-0825
ESTIMATING FAX #972-513-0661

Council Agenda Item: #2o

SUMMARY:

This item is to award a contract for rehabilitation of the 8-inch and 10-inch sanitary sewer line along Westgrove Drive, from Addison Road to Dallas Parkway.

FINANCIAL IMPACT:

Budgeted Amount: \$96,600.00

Cost: \$67,724.50

Funding Source: Utilities Capital Projects Fund

BACKGROUND:

The existing 8-inch sewer line on Westgrove Drive, from Addison Road to Dallas Parkway, is clay pipe approximately 30 years old, and suffers from deteriorated joints, which allows rainwater to infiltrate into the pipes during wet weather. There are also sewer service connections that protrude into the pipe that can cause clogged lines.

Bids were requested for rehabilitation of 2,050 feet of sewers using a lining process that effectively seals the joints and cuts off the protruding connections. The process is done from manhole to manhole without street excavation. Two bids were received as per the attached tabulation.

Insituform Technologies submitted the low bid of 67,724.50. Insituform has worked for Addison at least five times in the past and their work has always been outstanding.

RECOMMENDATION:

Staff recommends Council authorize the City Manager to enter into a contract with Insituform Technologies in the amount of \$67,724.50 for the trenchless internal lining of sanitary sewers along Westgrove Drive, from Addison Road to Dallas Parkway.

2004 Trenchless Internal Lining of Sanitary Sewer Lines**BID NO 04-17****DUE: June 22, 2004****2:00 PM**

BIDDER	SIGNED	BID BOND	TOTAL
Insituform Technologies	y	y	\$67,724.50
BRH Garver	y	y	\$72,509.00

Minok Suh

Minok Suh, Purchasing Coordinator

Corey Gayden

Corey Gayden, Witness

Council Agenda Item: #2p

SUMMARY:

This item is to request Council approval to enter into an Interlocal Agreement with the City of Dallas for the design and installation of water main improvements related to the Arapaho Road, Phase III project.

FINANCIAL IMPACT:

Budgeted Amount:	N/A
Cost:	Included as part of Arapaho Road, Phase III Construction Contract
Funding Source:	Funds are available from the FY 2004 Bond Sale and from Unallocated Bond Fund Proceeds

BACKGROUND:

The Arapaho Road, Phase III construction contract was awarded in June 2004 and it includes provisions for the construction of certain improvements to the existing Dallas Water Utilities 60 inch water supply line. Specifically, the Town will replace an existing in-line valve and lower approximately 70 linear feet of the main to accommodate proposed drainage facilities near the City of Dallas Water Pump Station. In order to facilitate this work, an interlocal agreement is necessary between the Town and the City of Dallas. In accordance with the agreement, the City of Dallas will furnish the valve and the Town will perform the valve installation and lower the 60 inch main as part of the Arapaho Road, Phase III construction improvements. The Town will also provide for the construction administration and inspection of the proposed improvements. In addition, the City of Dallas agrees to reimburse the Town for any increase in construction cost associated with the installation of the valve upon completion and final acceptance of the work by the Town.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into an Interlocal Agreement with the City of Dallas for the design and installation of water main improvements related to the Arapaho Road, Phase III project.

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

INTERLOCAL AGREEMENT

WHEREAS, the Town of Addison, Texas, a Texas municipal corporation (hereinafter called "Addison"), is in the process of expanding, extending and improving a public street known as Arapaho Road (the "Arapaho Road Improvement Project"); and

WHEREAS, the City of Dallas, Texas, a Texas municipal corporation (hereinafter called "Dallas"), is the holder of an easement for the construction, operation and maintenance of a water main (the "easement"), which easement is partially located within the limits of the Arapaho Road Improvement Project; and

WHEREAS, the Grantors of the said easement reserved for themselves, their heirs and assigns, the right to construct roadways over and across said easement, subject to review and approval of plans by the Superintendent of the Water Department of the City of Dallas; and

WHEREAS, the Arapaho Road Improvement Project includes the construction of an elevated bridge (the "Arapaho Bridge") over a portion of the easement; and

WHEREAS, Addison has submitted preliminary plans for the construction of the Arapaho Road Improvement Project, including preliminary plans for the construction of the Arapaho Bridge, to Dallas for its review and approval; and

WHEREAS, Dallas has reviewed said preliminary plans and finds them acceptable; and

WHEREAS, Dallas and Addison desire to enter into an agreement for the design of certain improvements by Dallas to its water main facilities located within the easement and within the limits of the proposed Arapaho Road Improvement Project from Surveyor Boulevard to Addison Road, the installation of such improvements by Addison, and to address certain matters with respect to the Arapaho Bridge; and

WHEREAS, Chapter 791 of the Texas Government Code provides authorization for a local government to contract with one or more other local governments to perform governmental functions and services under the terms of the Act;

NOW, THEREFORE, this Interlocal Agreement ("Agreement") is hereby made and entered into by Dallas and Addison for the mutual consideration stated herein:

WITNESSETH:

I.

The above and foregoing premises to this Agreement are true and correct and are incorporated herein and made a part hereof.

II.

Dallas hereby desires to replace the existing forty-eight-inch (48") water valve and manhole with a new sixty-inch (60") water valve and vault and all appurtenances thereto (hereinafter together called "Valve and Vault"), and to lower approximately 70 linear feet of the existing 60" water main (hereinafter called the "Water Main"), located within the limits of the proposed Arapaho Road Improvement Project from Surveyor Boulevard to Addison Road as shown in Exhibit A attached hereto and incorporated herein.

III.

Dallas hereby agrees to be responsible for the design and approval of all engineering plans, specifications and design changes related to the Valve and Vault, and to provide such plans and specifications to Addison for inclusion into the proposed Arapaho Road Improvement Project. Addison hereby agrees to be responsible for the design and approval of all engineering plans, specifications and design changes related to the lowering of the Water Main, and to provide such plans and specifications to Dallas for approval, which approval shall not be unreasonably denied.

IV.

Addison agrees to solicit and to award a bid in Addison's sole discretion for the installation of the Valve and Vault and the lowering of the Water Main in connection with and as part of the Arapaho Road Improvement Project.

V.

Dallas agrees to provide the valve and to be responsible for the cost of design and engineering of the Valve and Vault, including, without limitation, the specifications for the installation and construction thereof, and to reimburse or provide funds to Addison for the total cost of materials and installation of said Valve and Vault. Costs for the Valve and Vault, including, without limitation, costs for all materials and the installation and construction thereof, shall be based on actual construction bids received by Addison and any changes thereto (i.e., a change order) in connection with the construction of the Arapaho Road Improvement Project. Dallas hereby represents that funding for all such costs is or shall be available at the time of the award of a bid for the construction of the Arapaho Road Improvement Project. Dallas shall reimburse or provide funds to Addison in accordance with this paragraph within 30 days after execution by the Town of Addison of any contract in connection with materials, installation or construction of the Valve and Vault. Addison agrees to be responsible for the cost of design, engineering, and construction of the lowering of the Water Main, including, without limitation, the specifications for the construction thereof, and to provide funds for the total cost of materials in connection with the lowering of said Water Main. Costs for the lowering of the Water Main, including, without limitation, costs for all materials and the installation and construction thereof, shall be based on actual construction bids received by Addison and any changes thereto (i.e. a change order) in connection with the construction of the Arapaho Road Improvement Project.

VI.

Addison agrees to provide for the construction administration of the Valve and Vault and the lowering of the Water Main.

VII.

Dallas agrees to provide construction inspection of the Valve and Vault and the lowering of the Water Main.

VIII.

Dallas hereby agrees to design the Valve and Vault and Addison hereby agrees to design the lowering of the Water Main in accordance with the North Central Texas Council of Governments Standard Specifications for Public Works Construction (Third Edition 1998) and the Dallas Water Utilities Addendum to the Standard Specifications for Public Works Construction (December 1998).

IX.

Addison hereby agrees to immediately advise Dallas of any and all design or construction changes to the Valve and Vault or the lowering of the Water Main which may occur or which may be required during construction. Dallas hereby agrees to review and approve any such design change within 10 days after Addison advises Dallas of such change.

X.

Dallas hereby agrees to reimburse Addison for any increase in cost in connection with the installation of the Valve and Vault upon completion and final acceptance of the work by Addison and Dallas.

XI.

Dallas agrees to and does hereby approve and consent to the plans and specifications submitted by Addison for the design, engineering, and construction of the Arapaho Road Improvement Project, and including without limitation construction of the Arapaho Bridge over, across, within, under, and upon Dallas' water main easement.

XII.

Addison and Dallas agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible in accordance with the laws of the State of Texas for its own acts, forbearance, negligence and deeds, and for those of its officers, agents or employees in conjunction with the performance of work covered under this Agreement. Dallas is solely responsible for review and approval for the sufficiency, form, content, and engineering requirements for the design of the Valve and Vault, and for any adjustments to Dallas' existing and proposed water appurtenances.

XIII.

During the construction of the Arapaho Road Improvement Project and subject to the other terms and conditions of this Agreement, the Town of Addison agrees to indemnify and hold harmless Dallas from and against any and all claims or suits for any injuries, damages, loss, or liability, due to a failure of the water main to the extent that such failure is caused by the negligence of Addison in the construction of the Arapaho Road Improvement Project and to the extent that Addison would be legally liable; provided, however, that this indemnity and hold harmless is subject to and is not intended to and shall not waive nor be deemed to waive any immunity that the Town of Addison or any of its officials, officers, employees, or agents may be

entitled to, and that in giving such indemnity and hold harmless Addison does not waive any defense afforded to it by federal or Texas law. Further, such indemnity and hold harmless is and shall be subject to and shall not exceed the monetary limitations of damages as set forth in the Texas Tort Claims Act or any successor statute thereto.

XIV.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not create or grant any rights, contractual or otherwise, to any other person or entity.

XV.

This Agreement may not be assigned or transferred by any party without the prior written consent of the other party.

XVI.

Any notice provided for in this Agreement to be given by either party to the other shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, return receipt requested, or registered addressed as follows:

To Addison:

Town of Addison
Michael Murphy, P.E.
Director of Public Works
P.O. Box 9010
Addison, Texas 75001

To Dallas:

City of Dallas
Water Utilities Department
Relocations Manager
2121 Main Street, Suite 400
Dallas, Texas 75201

Either party may change its address for notice by giving the other party notice thereof.

XVII.

This Agreement has been duly executed and delivered by all parties and constitutes a legal, valid and binding obligation of the parties, their successors and permitted assigns. Each person executing this Agreement on behalf of each party represents and warrants that the person has full right and authority to enter into this Agreement.

XVIII.

This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.

XIX.

Notwithstanding any other provision of this Agreement, this Agreement shall be expressly subject to the governmental immunity of Addison and Dallas, Title 5 of Texas Civil Practice and Remedies Code, and all applicable federal and state law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. Exclusive venue for any legal action regarding this Agreement filed by either Addison or Dallas shall be in Dallas County, Texas.

XX.

Words of any gender used in this Agreement shall be held and constructed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.

XXI.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

XXII.

In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

XXIII.

This Agreement embodies the complete agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters in this Agreement and, except as otherwise provided herein, cannot be modified without written supplemental agreement of the parties to be attached to and made a part of this Agreement.

XXIV.

This Agreement becomes effective upon the date of its execution, which execution date is deemed to be the date the last of the parties signs this Agreement, and shall terminate when the installation of the Valve and Vault has been accepted by Addison and Dallas as completed. Dallas hereby agrees that design of the Valve and Vault will not commence until this Agreement has been fully executed by Addison and Dallas.

Executed as of the _____ day of _____, 2004, hereafter deemed to be the Effective Date of this Agreement.

TOWN OF ADDISON
RON WHITEHEAD
City Manager

CITY OF DALLAS
MARY K. SUHM
Interim City Manager

By: _____

By: _____

APPROVED AS TO FORM:
KEN DIPPEL, City Attorney

APPROVED AS TO FORM:
MADELEINE B. JOHNSON, City Attorney

City Attorney

By: _____
Assistant City Attorney

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

Before Me, the undersigned notary public in and for said county and state, on this _____ day of _____, 2004, personally appeared Mary K. Suhm, known to me to be the identical person who executed the within and foregoing document, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or entity upon behalf of which he acted, executed the instrument, for the uses and purposes therein set forth.

Notary Public, State of Texas

Print Name: _____

My Commission Expires:

[SEAL]

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

Before Me, the undersigned notary public in and for said county and state, on this _____ day of _____, 2004, personally appeared Ron Whitehead, known to me to be the identical person who executed the within and foregoing document, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or entity upon behalf of which he acted, executed the instrument, for the uses and purposes therein set forth.

Notary Public, State of Texas

Print Name: _____

My Commission Expires:

[SEAL]

Council Agenda Item: #R3

SUMMARY:

A representative from VFW Post 3530 will present the Mayor and Council with a dedication placard honoring the Korean War Veterans.

FINANCIAL IMPACT:

Budgeted Amount: N/A

Cost: N/A

BACKGROUND:

VFW Post 3530 submitted a request to the parks department to designate a 100+-year-old Burr Oak tree along the White Rock Creek jogging trail as the “Liberty Tree” of the Town of Addison. Liberty Trees For America is a program sponsored by the Veterans of Foreign Wars Foundation and American Forests to recognize Korean War veterans of the United States with a tree-dedication ceremony.

American Forests is the nation’s oldest citizen conservation organization, founded in 1875, and a world leader in tree planting for environmental restoration.

The Veterans of Foreign Wars and its Ladies Auxiliary, includes 2.7 million members in approximately 9,500 Posts worldwide. VFW has a rich tradition in enhancing the lives of millions through its community service programs and special projects, contributing more than 13 million hours of volunteerism in communities across America each year.

The parks department will permanently mount the plaque at the base of the tree during a dedication ceremony to be held later in August 2004.

Attachments include information on the Liberty Tree program.



Dear VFW Post Commander:

We are pleased to be working with you in this timely opportunity to recognize Korean War veterans of the United States with a tree-dedication ceremony.

Enclosed are materials to assist you with the final details of your Post's ceremony. Please use the enclosed press release to inform the media of your Post's local tree-dedication ceremony. You will find on the back of the press release instructions to help you with permanently setting the tree marker next to the dedicated Liberty Tree.

If you have any questions, please contact us and we will be glad to help you in any way. Again, we wish you a meaningful ceremony that will impact your community with its message of peace and freedom for all Americans.

Sincerely,

Janice Kelly
American Forests
American Forests Historic Tree Nursery

P.S. Please make sure to share your event photos with us. Thanks!

American Forests Historic Tree Nursery
8701 Old Kings Road ~ Jacksonville, FL 32219
(904) 765-0727 ~ Fax: (904) 768-4630 ~ info@historictrees.org
www.libertytrees.org

FOR IMMEDIATE RELEASE

Contact: (VFW CONTACT NAME)
(VFW CONTACT NUMBER)

Local Landmark Tree Honors Korean Vets

CITY, State – Month Day, 2004 --- A local tree will soon be dedicated as a Liberty Tree – one of thousands across the nation that stand as living symbols of freedom. The <commonly recognized name or location of tree> will be further dedicated to the veterans of the Korean War.

Every colonial community had a Liberty Tree – a place where early patriots gathered to talk about freedom from England. Under British rule, any political gathering would have been illegal if it was held indoors and viewed as a formal gathering. Trees became meeting places so that the colonists would look like they had casually met. These trees - nicknamed Liberty Trees - came to symbolize freedom, and many were cut down by British troops to undermine morale, but the spirit of freedom continued to flourish. The last surviving Liberty Tree - a tulip poplar in Annapolis, Maryland succumbed to old age in 1999.

Across America, VFW Posts are dedicating grand old landmark trees in their communities as their own "Liberty Tree." At the <common name of tree or location> members of VFW Post #_____ will gather on <Date – Time> to ceremonially dub it in honor of Korean War vets.

<Insert your dedication information: date, time, place and names of notable speakers>

To further honor the legacy of the Liberty Trees, American Forests and the VFW have united to plant one tree for each and every member of our U.S. armed forces, a total of 1,384,000 trees. The trees will be planted throughout the United States in selected ecosystem restoration projects designated as Liberty Forests. Liberty Forests will provide a substantial and measurable environmental impact, cleaning the air, conserving soil, and improving wildlife habitat. The VFW Foundation will distribute a "Thanks For Serving" letter and a special certificate to each of our armed forces personnel.

Plant trees online at www.libertyforests.org to support our armed forces.

AMERICAN FORESTS (www.americanforests.org) is the nation's oldest citizen conservation organization, founded in 1875, and a world leader in tree planting for environmental restoration.

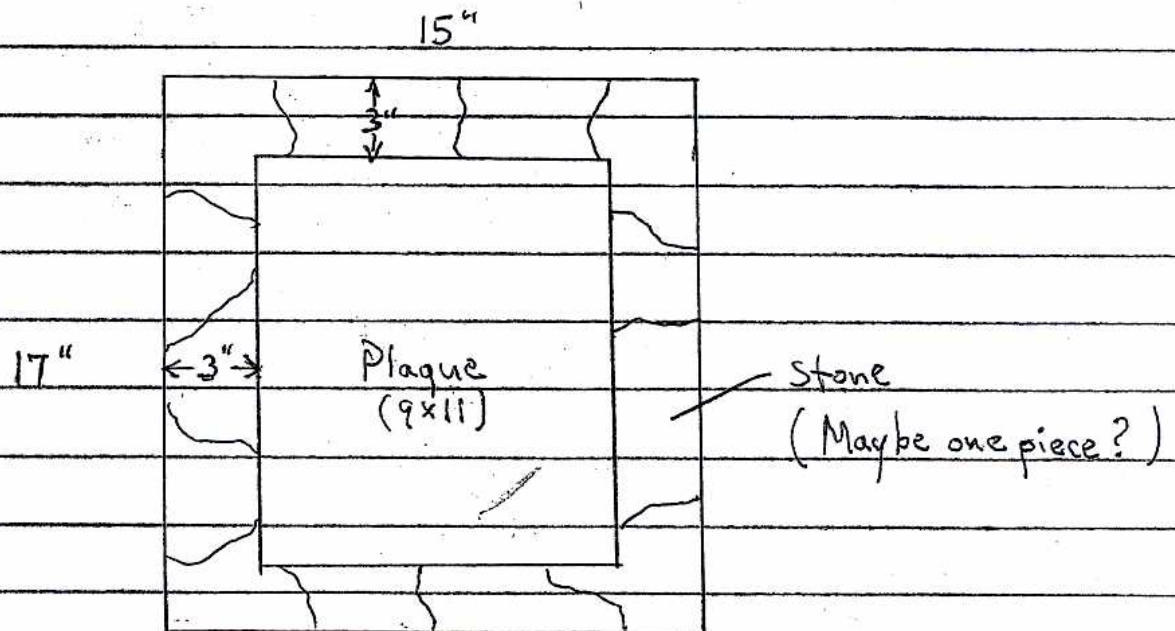
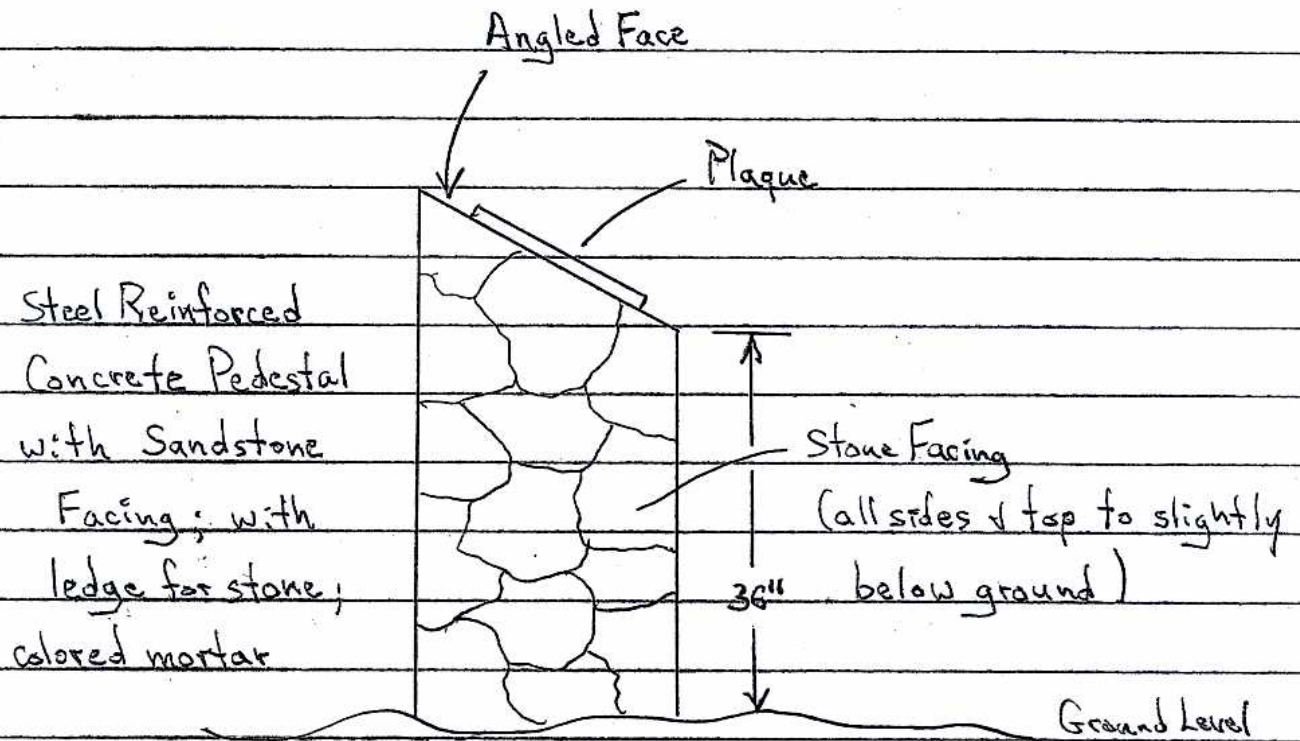
The Veterans of Foreign Wars and its Ladies Auxiliary, includes 2.7 million members in approximately 9,500 Posts worldwide. VFW has a rich tradition in enhancing the lives of millions through its community service programs and special projects, contributing more than 13 million hours of volunteerism in communities across America each year. *The VFW Foundation* is dedicated to improving the lives of veterans, service personnel, their families and their communities.

-30-

AMERICAN FORESTS and LIBERTY TREES:
Susan Corbett, American Forests Historic Tree Nursery
8701 Old Kings Road, Jacksonville, FL 32219
(904) 765-0727 Fax: (904) 768-4630
Email: scorbett@historictrees.org
www.libertyforests.org

VFW Foundation:
Michael Meyer, Administrator of Corporate and Foundation
Development
406 W 34th Street, Kansas City, MO 64111
(816) 986-1128 Fax: (816) 968-2789
Email: mmeyer@vfw.org
www.vfw.org

Korean War Memorial



Council Agenda Item: #R4

SUMMARY:

For the City Council to acknowledge the “Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award for the fiscal year beginning October 1, 2003.”

FINANCIAL IMPACT:

There is no financial impact associated with this recognition.

BACKGROUND:

The Government Finance Officers Association (GFOA) created a Distinguished Budget Presentation Award in 1984 to encourage governments to prepare budget documents of the highest quality to meet the needs of decision-makers and citizens.

In order to receive this award, a governmental unit must publish a budget document that meets program criteria as a policy document, as an operations guide, as a financial plan and as a communications device.

The Town of Addison has received the Distinguished Budget Presentation Award every year since 1987 and has received notice that the annual budget for the Fiscal Year beginning October 1, 2003 has also received this distinction.

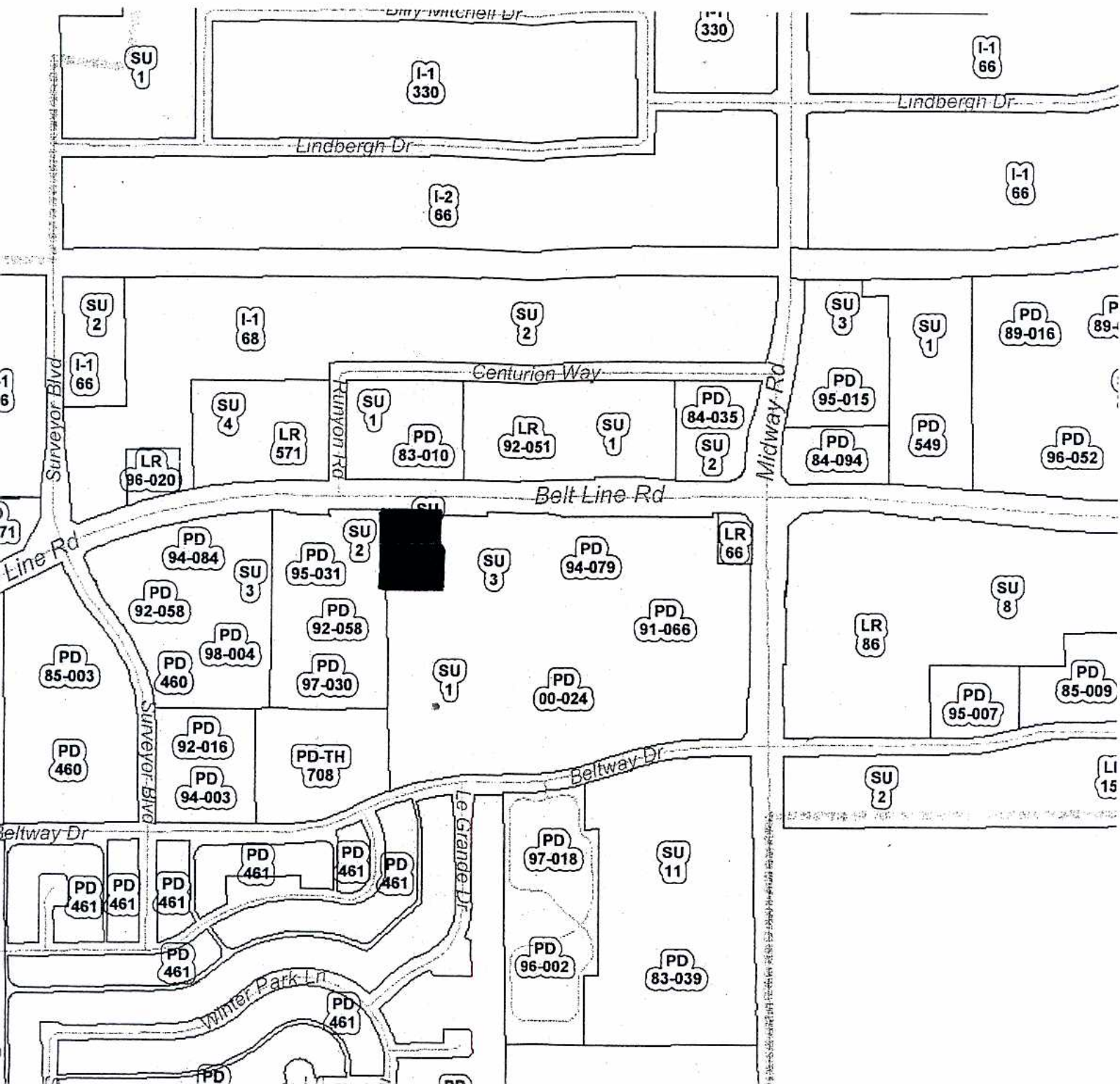
**THERE ARE NO
ATTACHMENTS
FOR ITEM #R5**

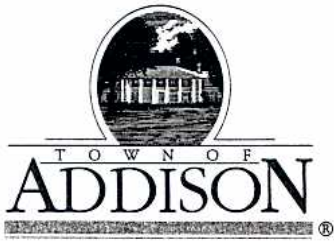
**THERE ARE NO
ATTACHMENTS
FOR ITEM #R6**

**THERE ARE NO
ATTACHMENTS
FOR ITEM #R7**

1464-Z

Case 1464-Z/Washington Mutual. Requesting approval of development plans for a bank with drive-through facilities, located in an existing Planned Development district (#459), located at 4100 Belt Line Road, on application from Washington Mutual, represented by Mr. Jason Sheets of Design Forum Architects.





Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

FAX (972) 450-7043

July 16, 2004

STAFF REPORT**RE:**

Case 1464-Z/Washington Mutual

LOCATION:

4100 Belt Line Road

REQUEST:

Approval of development plans in an Existing PD (Planned Development) District, (Ordinance 459)

APPLICANT:

Washington Mutual, represented by Mr. Jason Sheets of Design Forum Architects

DISCUSSION:

Background. This site was originally developed as a McAlister's Deli, which was granted a Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption through Ordinance 098-042 (9-8-98). In May of 2001, Baker Bros. Deli took over the space and amended the Special Use Permits (Ordinance 001-013). At this point, Baker Bros. Deli is planning to close in September of this year and relocate to a lease space in the Addison Walk shopping center. Washington Mutual will then take over this restaurant building and convert it to a bank with drive-thru uses.

Proposed Plan. The plans show a bank of 4,062 square feet with three lanes for drive-through service. The bank will contain a lobby with teller service, eight workstations, a teller room for the drive-thru tellers, a security room, restrooms and other support spaces. The existing covered patio on the east side of the building will be removed and that area converted to landscaping. The drawings do not show any mechanical equipment, but the applicant should be aware that all mechanical equipment must be screened from view.

Façade. The exterior of the building is a combination of split-faced concrete block. Washington Mutual will make only minor changes to the façade. There will be a drive-thru canopy added to the south façade of the building for the drive-thru lanes.

Parking and traffic. The plans indicate 67 parking spaces for the 4,062 square foot bank. The required parking for a bank is one space per 300 square feet. Under that ratio, the bank would require 14 spaces. The applicant will be converting some parking to landscaping, but there is still more than sufficient parking. The staff always looks carefully at the queuing for drive thru uses. Staff requires at least 100 feet (5 cars) stacking from the transaction point. This site provides 100 feet of queuing for all three drive-thru lanes.

Landscaping. The Parks Department has reviewed the plan and finds it meets the requirements of the ordinance. The Parks Department recommends approval of the proposed plan as shown.

Engineering. The Public Works Department has reviewed the plans, and notes the following items that should be addressed on the plans that the applicant will turn in for a construction permit:

- Grading and drainage plans, specifically targeting the southern portion of the property must be approved by the Public Works Department.
- Existing and proposed utility lines, including a new double detector check valve and all metering points, must be included on plans.
- Location of fire lanes must be shown on the plans.
- Dimension existing access lanes throughout the site. The drive approach at Belt Line Road must be capable of handling two-way traffic.
- Handicapped ramps, markings, and signage must be updated to current ADA standards.

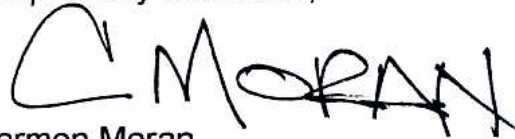
Dumpster. The bank will utilize the existing dumpster enclosure on the site. The plans indicate the dumpster will be adequately screened.

Signs. The applicant has shown signs on the building. The applicant should be aware that all signs must be permitted under the requirements of the Addison Sign ordinance, and cannot be approved through this process.

RECOMMENDATION:

This is the second restaurant to bank conversion the staff has reviewed over the last couple of months. The staff feels that this redevelopment is a good adaptive re-use for this building and recommends approval of the request subject to the no conditions

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C MORAN'. The 'C' is a large, stylized loop, and 'MORAN' is written in a more standard, slightly slanted font.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on July 22, 2004, voted to recommend approval of the request for development plan approval, on application from Washington Mutual, subject to no conditions:

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow
Voting Nay: None
Absent: None

Carmen Moran

From: Steve Chutchian
Sent: Thursday, July 08, 2004 2:20 PM
To: Carmen Moran
Subject: Case 1464-Z/Washington Mutual

Development plans for Case 1464-Z/ Washington Mutual were reviewed and the following comments are submitted:

- Grading and drainage plans, specifically targeting the southern portion of the property must be approved by the Public Works Dept.
- Existing and proposed utility lines, including a new double detector check valve and all metering points, must be included on plans.
- Show location of fire lanes.
- Dimension existing access lanes throughout site. Drive approach at Belt Line Road must be capable of handling two way traffic.
- Handicapp ramps, markings, and signage must be updated to current ADA standards.

Should you have any questions, please let me know.

Steve Chutchian, P.E.
Assistant City Engineer

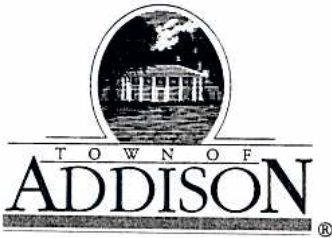
Memorandum

Date: July 9, 2004
To: Carmen Moran, Director of Development Services
From: Slade Strickland, Director of Parks and Recreation
Subject: **Case 1464-Z/Washington Mutual**

The plan submitted by the applicant meets all the requirements in the landscape regulations. We recommend the applicant consider monument signage on the Belt Line Road frontage to avoid trees blocking a pole sign.

The map displays the following streets and lot details:

- Streets:** Addison Rd, Quorum Dr, Spectrum Dr, Belt Line Rd, Sakowitz Dr, Montfort Dr, Landmark Blvd, Inwood Rd, Landmark Pl.
- Lot Zoning and Numbers:**
 - Top Left: C-1 688, PD 94-076, PD 00-039, PD 94-052, PD 93-008, SU 2, C-2 92-038, C-1 688, PD 02-020, LR 650, SU 1, SU 1 LR 284.
 - Top Center: C-1 305, SU 2, PD 601, PD 84-005, PD 97-021, PD 83-046, SU 4, SU 2, LR 392, PD 83-007, PD 86-079, SU 1, PD 91-043.
 - Center Left: LR 78, PD 01-002, C-1 245, SU 1, PD 84-100, PD 95-011, C-1 245, PD 760, SU 1, I-1 66, PD 84-095, SU 1.
 - Center Right: SU 1, C 66, SU 1, PD 86-014, SU 3, PD 566, PD 86-036, SU 1, PD 95-035, PD 85-100, SU 2.
 - Far Right: SU 4, LR 419, PD 96-028, PD 96-003, SU 13, PD 02-001.
 - Bottom Left: LR 695, LR 289, LR 300, SU.



Addison 50!

50 YEARS OF FUN!

Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

FAX (972) 450-7043

July 29, 2004

STAFF REPORT

RE: Case 1466-SUP/Baker Bros. Deli

LOCATION: 5000 Belt Line Road, Suite 300
Addison Walk Shopping Center

REQUEST: Approval of a Special Use Permit
for a restaurant, and a Special Use
Permit for the sale of alcoholic
beverages for on-premises
consumption only

APPLICANT: Baker Bros. Deli, represented
By Mr. Brian Fletcher

DISCUSSION:

Background. This lease space is located in the Plaza at the Quorum Shopping Center. The Center has almost completed its renovation and has been re-named Addison Walk. The Commission and Council have already approved Nothing But Noodles, Buffalo Wild Wings, and Freebird's World Burrito as new restaurants in this center. Nothing But Noodles and Buffalo Wild Wings are open, and Freebird's is under construction. At this point, Baker Bros. Deli plans to move from its existing location in a free-standing building at 4100 Belt Line Road. Washington Mutual will take over that location. Baker Bros. wants to move into a lease space in the Addison Walk shopping center, and hopes to open in the new location the day after it closes in the current location.

Proposed Plan. The floor plan shows a 2,938 square foot restaurant with seating for 100. The plan does not show a separate bar area, but the applicant intends to serve beer and wine. Food is ordered at a deli-style counter and then picked up by the customers. The drinks are self-service. The kitchen will take up 1,200 square feet (41%) and the dining area and restrooms will take up the remaining 1,738 square feet (59%) of the floor area.

The plans do not indicate any patio dining. However, new restaurants often do not show patio space, but then come back in and want it immediately. The staff understands that Baker Bros. Deli will sell beer and wine only, and thus will not be required to have a fenced patio. Staff recommends that square footage, and the parking that must go with it, be allocated to a patio area now so that the applicant will not have to return to add tables and chairs on the sidewalk outside the restaurant. There is not much sidewalk area that could be allocated to outside dining at this location, but staff recommends 100 square feet be added to the square footage approved for this restaurant so a couple of tables with chairs can be added to the sidewalk in front of the restaurant. However, Baker Bros. Deli should be aware that the sidewalk must be kept clear for a width of at least 3 feet. This additional outside dining space would take the total amount of square footage approved for this restaurant to 3,038 square feet. The applicant is not obligated to use the outside dining area, but it would be available for his use without having to go through the 45-day Special Use Permit process again.

Parking. Restaurant uses in this center have a parking ratio of one space per 180 square feet. This restaurant will require 17 spaces, including the spaces required for the patio. The site will provide sufficient parking. However, the shopping center owner should be aware that there is a limit to the amount of restaurant space that can be added to the center.

Landscaping. The landscaping in this center is currently being renovated as part of the center's redevelopment. Much of the landscaping was installed, and then was not watered and died. The dead and missing plants on the site will have to be installed prior to the issuance of a Certificate of Occupancy for this restaurant.

Food Service Code. This restaurant will require a grease trap, and the applicant should be advised that the restaurant will be subject to all regulations contained in the Addison Food Service Ordinance.

Signage. The applicant will not make any changes to the existing brick façade for the space. The plans do not show any signs, but the applicant should be aware that signs cannot be approved through this process. All signs for the restaurant must comply with the requirements of the Addison Sign Ordinance. The applicant should also be aware that the Town has a policy against allowing any exterior signs, which contain the words bar", "tavern" or any terms, or graphic depictions, which relate to alcoholic beverages on exterior signs for the restaurant.

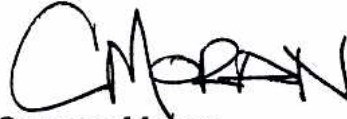
RECOMMENDATION:

Staff recommends approval of the Special Use Permit for a restaurant, and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- the landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.

- the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Moran', with a stylized, overlapping 'N' at the end.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 5, 2004, voted to recommend approval of your request subject to the following conditions:

- the landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.

- the applicant shall not use any terms, including the term "bar," "tavern," or any graphic depictions that denote alcoholic beverages in exterior signs.

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow

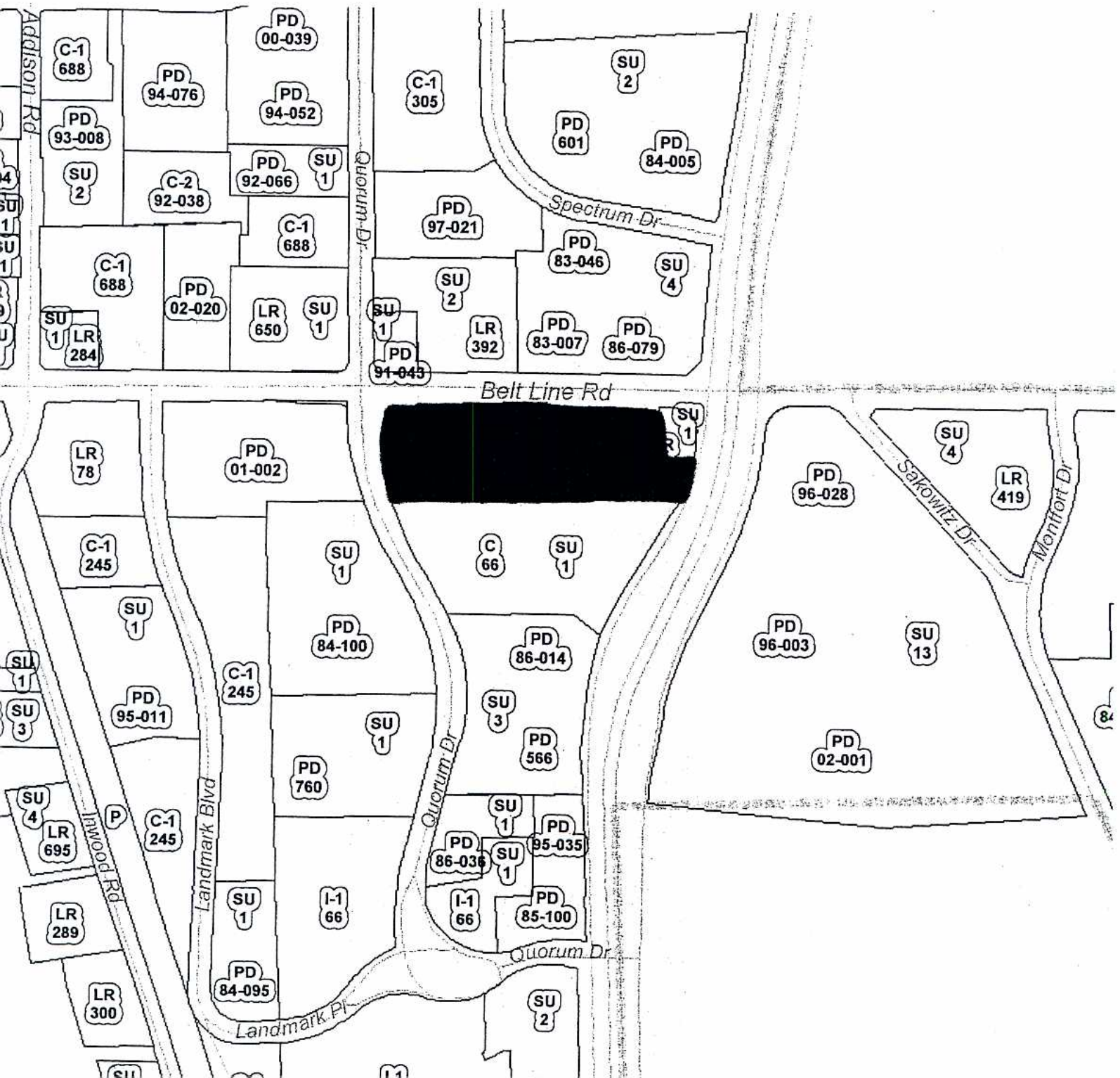
Voting Nay: None

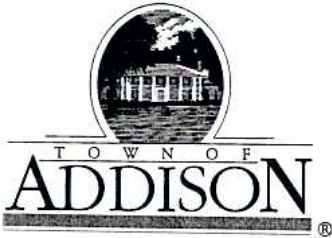
Absent: None

**ITEM #R9-3 (PLANS)
IS NOT AVAILABLE
ELECTRONICALLY**

1467-SUP

Case 1467-SUP/Buffalo Wild Wings. Requesting approval of an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 100, on application from Buffalo Wild Wings, represented by Mr. Joel D. Rich, Attorney at Law.





Addison 50!

50 YEARS OF FUN!

Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

July 29, 2004

STAFF REPORT

RE: Case 1467-SUP/Buffalo Wild Wings
Grill and Bar

LOCATION: 5000 Belt Line Road, Suite 100
Addison Walk Shopping Center

REQUEST: Approval of an amendment to an
existing Special Use Permit
for a restaurant, and an amendment to
an existing Special Use Permit for the
sale of alcoholic beverages for on-
premises consumption only

APPLICANT: Texas BWW Restaurants, Inc.,
represented by Mr. Joel Rich

DISCUSSION:

Background. This lease space is located in the Addison Walk Shopping Center. The Special Use Permit for Buffalo Wild Wings was approved on February 10, 2004 through Ordinance 004-011. Buffalo Wild Wings opened on July 10th. At this point, the restaurant would like to add an outside dining patio. In the original SUP request, the staff noted that the restaurant did not show any outside dining. When the permit set came in, it showed a patio area, and the staff marked through the patio in red and noted that it was not approved through the SUP. The marked-up set went to the contractor who built out the space, but apparently word that the patio was not approved did not get to the corporate office in Minneapolis. The restaurant is eager to have the patio, and went ahead and put the railing up while the request is going through the process.

Proposed Plan. The patio measures 496 square feet, and is enclosed with a black, painted steel fence 48 inches in height.

Landscaping. The new landscaping has been installed on the site, but much of it was not watered and has died. Slade Strickland is working with the property owner to get the landscaping replaced. There is not a CO that will be issued for this patio, but staff is recommending that the CO for Baker Bros. Deli (also on this agenda) be held until the landscaping is in place.

Parking. Restaurant uses in this center have a parking ratio of one space per 180 square feet. This restaurant will require 35 spaces under the new requirement. The site will provide sufficient parking.

RECOMMENDATION:

Staff recommends approval of the amendment to an existing Special Use Permit for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, subject to no conditions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C Moran', with a stylized flourish at the end.

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 5, 2004, voted to recommend approval of the request on application from Buffalo Wild Wings, subject to no conditions.

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Jandura, Knott, Mellow

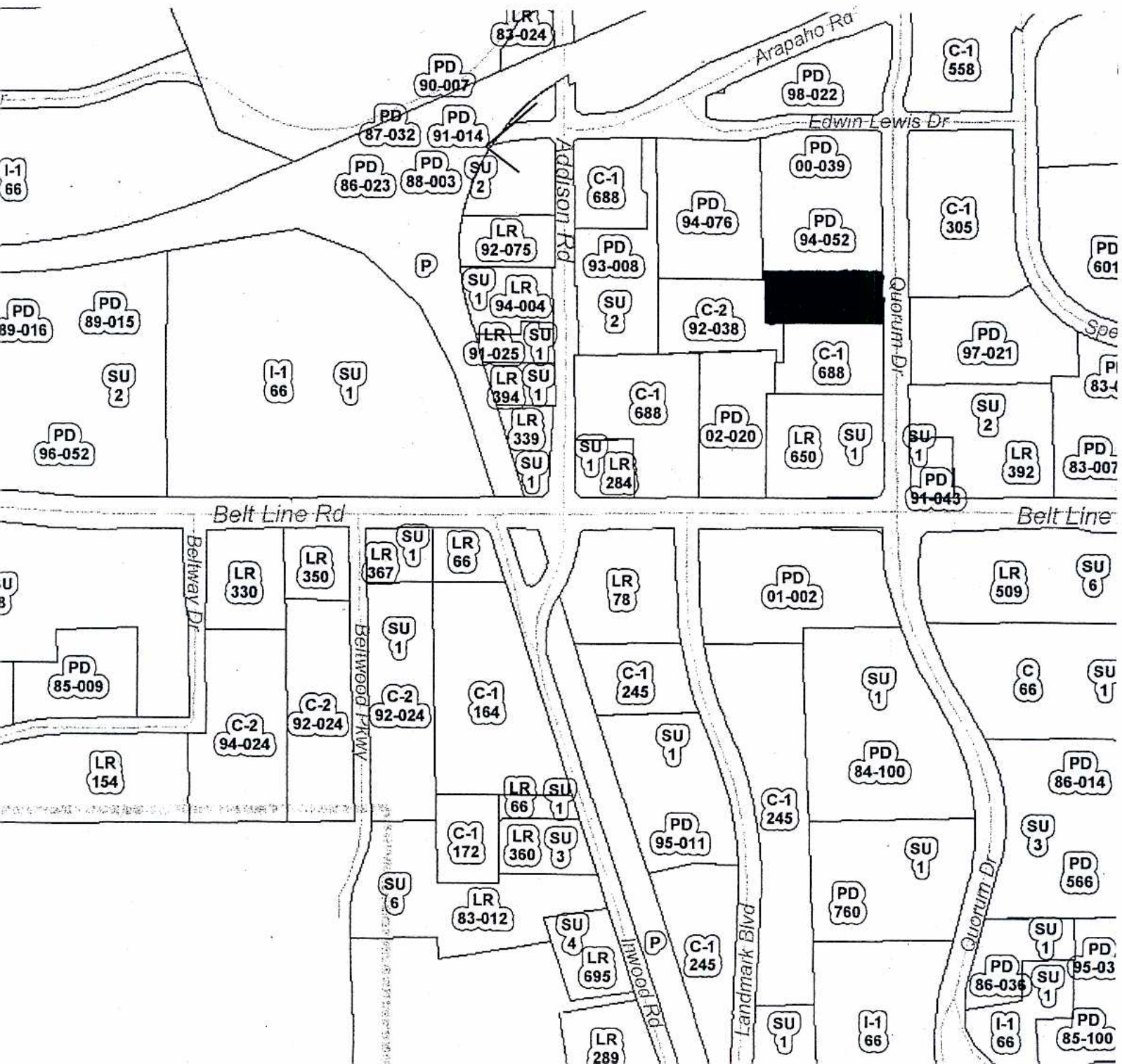
Voting Nay: None

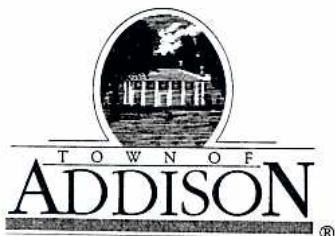
Absent: None

**ITEM #R10-3 (PLANS)
IS NOT AVAILABLE
ELECTRONICALLY**

1465-SUP

Case 1465-SUP/Arthur's Restaurant. Requesting approval of an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 15175 Quorum Drive, on application from Arthur's Restaurant, represented by Mr. Mohsen Heidari.





Addison 50!

50 YEARS OF FUN!

Post Office Box 9010

Addison, Texas 75001-9010

5300 Belt Line Road

(972) 450-7000

July 29, 2004

FAX (972) 450-7043

STAFF REPORT

RE:

Case 1465-SUP/Arthur's Restaurant

LOCATION:

15175 Quorum Drive

REQUEST:

Approval of an amendment to an existing Special Use Permit for a restaurant and an existing SUP for the sale of alcoholic beverages for on-premises consumption

APPLICANT:

Mr. Moshen Heidari

DISCUSSION:

Background. This property is zoned Planned Development. It was originally developed in 1992 (Ordinance 092-067, November 10, 1992) with a steakhouse called Lexi's. It has changed hands and been remodeled several times through the years, but has been Arthur's Restaurant for about the past four years. The current owner, Moshen Heidari, amended the existing Special Use Permit in November of 2002 to expand the restaurant to add space down the side of the bar. At this time, the owner would like to add a small office for himself at the rear of the building. The office would be separate from the restaurant, but would contain two offices and a restroom.

Last month, the staff found that Arthur's had enclosed its dumpster screening area and was using it for storage. The dumpster and some grease barrels were sitting unscreened in the parking lot, which is a zoning ordinance violation. The staff recommended the request be tabled until the dumpster violation was corrected.

At this point, the owner has begun construction on the new dumpster enclosure and is preparing to move the dumpster and barrels into the screening enclosure.

Proposed Plan. The applicant is planning to build two offices and a restroom in a separate building behind the existing restaurant. The building will be located in a paved area behind the restaurant. There is not parking in the paved area, so no parking spaces or landscaping will be eliminated to add the building. The staff has reviewed the plans for the building, and while the drawings indicate the building will be 400 square feet, the dimensioned floor plan only calculates out to 307 square feet. The Fire and Building Inspection staff members have reviewed the plans for the building, and they find that it does not have to be sprinklered because it is less than 500 square feet in area. However, the building will be subject to all requirements of the building code. Memos from the Fire Prevention Chief and Building Official are attached.

Façade. The plans do not indicate the materials for the outside of the building. The staff recommends the applicant be required to finish this new building with the same brick and roofing materials that are on the existing restaurant.

Parking. The parking ratio for a free-standing restaurant is one space per 70 square feet. The existing restaurant is 6,431 square feet. This proposed addition will bring the restaurant to 6,738 square feet, which will require 96 parking spaces. The site provides 102 spaces; therefore, the restaurant meets the requirement.

Landscaping. The applicant is not removing any of the existing landscaping. However, the existing landscaping on the site needs to be pruned and weeded. The Parks Department will inspect the site before a Certificate of Occupancy is issued for the new building, and the site should be cleaned up and any dead or missing landscaping must be replaced before a CO is issued.

Dumpsters. This case was tabled last month in order to give the applicant time to build a dumpster enclosure for the dumpster and barrels on the site. The applicant furnished a plan for the dumpster screen which did not give the staff sufficient detail as to the construction material (plan and photo attached). The enclosure has been constructed out of plywood, and is not large enough to hold the barrels and other trash containers stored on the site. In addition it does not have the gate the plan indicated it would have. The enclosure needs to be reconstructed out of the same brick as the new building. It needs to be large enough to hold all refuse containers on the site, and it needs to have a gate on it. The enclosure must be completed and the dumpsters moved into the enclosure prior to the issuance of a Certificate of Occupancy for the new building.

Screening of Mechanical Equipment. All mechanical equipment on the new building shall be completely screened from view. The screening material shall be architecturally compatible to the building, and the Building Official shall make the determination of "architecturally compatible".

RECOMMENDATION:

Staff recommends approval of the request for the amendment to an existing Special Use Permit for a restaurant, and the SUP for the sale of alcoholic beverages for on-premises consumption only, subject to the following conditions:

- The staff recommends the applicant be required to finish this new building with the same brick and roofing materials that are on the existing restaurant.

- Any dead or missing landscaping must be replaced before a CO is issued for the new building.

- The dumpster enclosure must be reconstructed out of the same brick as the new building. It must be large enough to contain all refuse containers, and it shall

have a gate on the front. The new dumpster enclosure shall be completed prior to the issuance of a Certificate of Occupancy for the new office building.

-All mechanical equipment on the new building shall be completely screened from view. The screening material shall be architecturally compatible to the building, and the Building Official shall make the determination of "architecturally compatible".

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C Moran". The signature is stylized with a large, looped "C" and a more fluid, cursive "Moran".

Carmen Moran
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on August 5, 2004, voted to recommend approval of the request on application from Arthur's Restaurant, subject to the following conditions:

- The staff recommends the applicant be required to finish this new building with the same brick and roofing materials that are on the existing restaurant.

- Any dead or missing landscaping must be replaced before a CO is issued for the new building.

- The dumpster enclosure must be reconstructed out of the same brick as the new building. It must be large enough to contain all refuse containers, and it shall have a gate on the front. The new dumpster enclosure shall be completed prior to the issuance of a Certificate of Occupancy for the new office building.

- All mechanical equipment on the new building shall be completely screened from view. The screening material shall be architecturally compatible to the building, and the Building Official shall make the determination of "architecturally compatible".

Voting Aye: Benjet, Bernstein, Chafin, Doepfner, Knott, Jandura, Mellow

Voting Nay: None

Absent: None

Carmen Moran

From: Gordon Robbins
Sent: Thursday, July 22, 2004 8:33 AM
To: Carmen Moran
Subject: Proposed Arthur's Restaurant outbuilding

After reviewing the submittal it appears the proposed structure would be in accordance with the Fire Code, and fire sprinklers would not be required as it is a separate structure less than 500-sq ft in area.

There are building separation and firewall requirements applicable from the Building Code, however I understand Lynn has addressed these issues in a previous correspondence.

*Gordon C. Robbins
Deputy Fire Chief
Addison, Texas
972-450-7220*

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: July 21, 2004

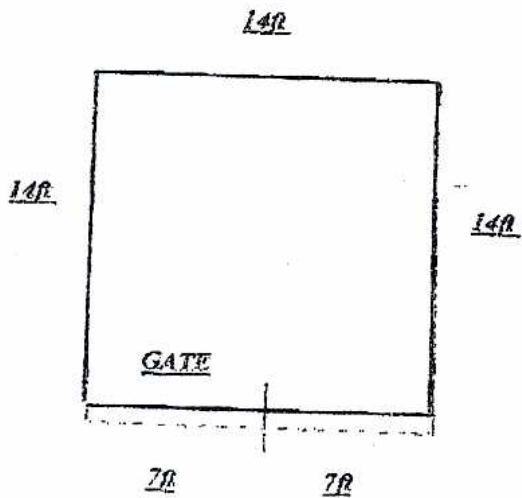
Subject: Arthurs, 15175 Quorum Drive

Any additions to an existing building that has a fire sprinkler system is required to be sprinklered also. To be considered a separate building that doesn't require a fire sprinkler, the new building would have to be less than 500 SQ. FT. in area, located a minimum of ten feet from the existing building and, have a minimum of a one-hour firewall on the side that faces the existing building.

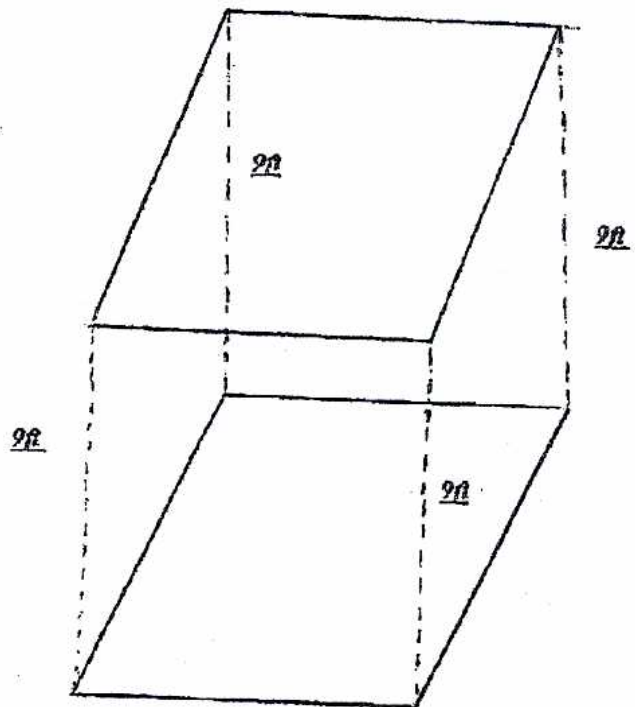


Base

DUMPSTER
SCREEN

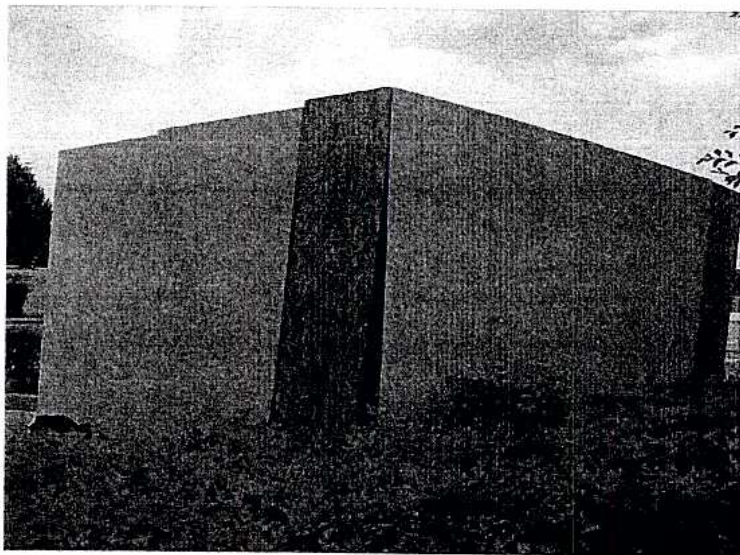


Height





Arthur's dumpster enclosure from the front



Arthur's dumpster enclosure from the side

**ITEM #R11-3 (PLANS)
IS NOT AVAILABLE
ELECTRONICALLY**

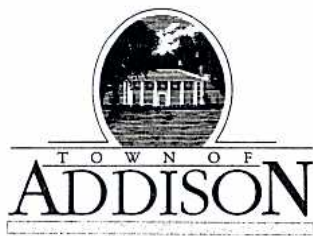
MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE
STAFF REPORT
ME 2004-9

Date: July 26, 2004
Business Name: Outer Marker
Location of Request: 16101 Addison Rd

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>
<p>Sec. 62-167. Government Signs.</p> <p>(b) Nothing in this chapter shall be construed to prevent the display of a national flag and/or state flag whose size does not exceed 40 square feet and which flag is displayed upon a flagpole which does not exceed 30 feet in height. All national flags or state flags in excess of the foregoing sizes must apply for a meritorious exception as set forth in subsection 62-32(a).</p>	<p>The applicant is requesting 29 NFL team flags. Each flag has an area of 15 SQ Ft.</p>	<p>The ordinance only allows state or national flags.</p>

STAFF RECOMMENDATION: Staff recommends denial of the request.


STAFF: Lynn Chandler, Building Official

**BUILDING INSPECTION DEPARTMENT**

(972) 450-2880 FAX (972) 450-2837

*Addison 50!***50 YEARS OF FUN!**

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

To: Carmen Moran, Director of Development Services

From: *LC* Lynn Chandler, Building Official

Date: August 2, 2004

Subject: Meritorious Exceptions to the Sign Ordinance

The following exceptions have been granted for flags:

1. 14951 Dallas Parkway
Carter Crowley Properties (Comp USA)
Meritorious Exception Ord. 093-030, May 11, 1993
Flag and Pole: Pole Height 120', Flag Area 760 sq. ft.
2. 14951 Dallas Parkway
Comp USA
Meritorious Exception Ord. 003-005, March 11, 2003
Corporate flag 98 square feet in area.

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: July 21, 2004

Filing Fee: \$200.00

Applicant: Outer Marker, LLC

Address: 16101 Addison Road Suite#: _____

Addison, TX 75001 Phone#: 972.701.9095

City State Zip Fax#: 972.286.6508

Status of Applicant: Owner X Tenant _____ Agent _____

Location where exception is requested:

16101 Addison Rd, Addison, TX 75001

Reasons for Meritorious Exception:

1. Restaurant Theme - Sports Cafe'
2. Not visible from main streets - many existing obstructions
3. Temporary - during football season only
4. Addison Residences & Patrons - very positive & enthusiastic response
5. Raises the "Spirit of the season" for football. While at the cafe' patrons display excitement seeing their team flags displayed
6. Outer Marker believes this will significantly increase our attendance during the games by word of mouth

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- | | |
|-----------------------------------|---|
| 1. Lot Lines | 5. Proposed Signs |
| 2. Names of Adjacent Streets | 6. Sketch of Sign with Scale and Dimensions Indicated |
| 3. Location of Existing Buildings | (8.5 x 11 PLEASE) |
| 4. Existing Signs | |

Date Fees Paid 7-21-04 Check # CASH Receipt # 192441

**ITEM #R12-4 (PLANS)
IS NOT AVAILABLE
ELECTRONICALLY**

Council Agenda Item: #R13

SUMMARY:

To consider an ordinance by the Addison City Council to regulate the maximum fees charged for non-consent tows within the Town of Addison by Tow Truck Service Companies.

FINANCIAL IMPACT:

Budgeted Amount: \$N/A

Cost: \$N/A

BACKGROUND:

On occasion, the Town has received complaints from residents and visitors regarding their unpleasant experience in retrieving their personal vehicle through a non-consent tow. There are three basic complaints that are routinely received by the Town: 1) the high prices without reasonable explanation by the towing company; 2) the excessive distance to the impound lot to retrieve the vehicle; 3) the requirement of the towing company to accept cash only for payment to retrieve the impounded vehicle.

As a result, staff along with the City Attorney's Office, researched municipalities' abilities in regulating non-consent towing. Staff conducted an informal survey (attached) of the pricing from area towing companies. The results demonstrate a wide range and inconsistency for miscellaneous and towing fees while the state of Texas regulates impound and storage fees.

Based on this information, the City Attorney's Office drafted an ordinance that states the maximum fee for a non-consent tow, sets a maximum distance to the impound lot, and allows for credit card payments. All of these requirements were modeled from ordinances from various cities including the City of Dallas.

RECOMMENDATION:

Staff recommends that Council approve the proposed ordinance.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 22, "BUSINESSES," OF THE TOWN OF ADDISON CODE OF ORDINANCES, BY ADDING A NEW ARTICLE VI, "TOW TRUCK SERVICES," REGULATING THE FEE THAT MAY BE CHARGED FOR NON-CONSENT TOWS; REQUIRING THAT NON-CONSENT TOW VEHICLES BE TAKEN TO A FACILITY THAT IS LOCATED NO MORE THAN 15 MILES FROM THE LOCATION FROM WHICH THE VEHICLE IS TOWED; REGULATING THE FORM OF PAYMENT THAT CAN BE REQUIRED FOR A NON-CONSENT TOW; ESTABLISHING OTHER APPROPRIATE REGULATIONS; PROVIDING A PENALTY OF \$500; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city council of the Town of Addison has determined that it is in the public interest to exercise its authority to establish certain regulations governing tow truck services pursuant to Chapters 643 and 684 of the Texas Transportation Code, and the Town's general police power as a home-rule municipality; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. That Chapter 22, "Businesses," of the Town of Addison Code of Ordinances is amended by adding a new Article VI to read as follows:

"ARTICLE VI. TOW TRUCK SERVICES

Sec. 22-202. Purpose.

The purpose of this article is:

- (1) to assure the rights of property owners to have unattended and unwanted motor vehicles removed from their property;
- (2) to assure the rights of towing companies to collect a fair fee for service; and
- (3) to assure the rights of vehicle owners to obtain expeditious recovery of their vehicles for a fair fee.

Sec. 22-203. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consent tow means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

Non-consent tow means any tow of a motor vehicle that is not a consent tow.

Vehicle storage facility means a facility operated by a person licensed under Chapter 2303, Texas Occupations Code.

Sec. 22-204. Maximum Fee for Non-Consent Tow.

(a) The maximum fee that may be charged for a Non-consent tow, whether a tilt-bed wrecker or a conventional wrecker is used, is:

- (1) \$95.00 for a vehicle with a manufacturer's gross vehicle weight rating of not more than 10,000 pounds;
- (2) \$150.00 for a vehicle with a manufacturer's gross vehicle weight rating of more than 10,000 pounds but not more than 26,000 pounds; and
- (3) \$350.00 for a vehicle with a manufacturer's gross vehicle weight rating of more than 26,000 pounds.

(b) No additional fee may be charged for linkage of a vehicle prior to the tow or for the use of dollies, go-jacks or similar equipment.

(c) No additional fee may be charged for post-towing restoration of a vehicle to its owner.

Sec. 22-205. Fee Study.

(a) The operator or owner of a towing company or tow truck services business may request that a towing fee study be performed to determine if the fees established by this article represent the fair value of the services.

(b) A company or business requesting a fee study shall provide to the Town financial or accounting information related to tow services. Such information shall be verified as required by the Town.

(c) The city council shall amend the allowable fees for non-consent tows at amounts that represent the fair value of the services based on the study.

(d) A fee study shall not be required if such a study has been performed within the preceding 24 months prior to receiving the request.

Sec. 22-206. Release of Vehicle Prior to Removal and Maximum Fee for Restoring Vehicle to Owner.

If an owner or operator of a vehicle that is about to be towed, pursuant to a non-consent tow, but before the actual removal of the vehicle from the property from which it is being towed, returns to the tow location, he or she may demand immediate release of the vehicle by the tow truck operator. Upon satisfactory proof meeting the requirements of state law and payment of 40 percent of the applicable non-consent towing fee established by this article, the operator shall comply with the demand.

Sec. 22-207. Location of Storage Facility.

Vehicles towed as a result of non-consent tows shall be taken to a vehicle storage facility that is located no more than 15 miles from the location from which the vehicle was removed.

Sec. 22-208. Payment.

A towing company or the owner or operator of a tow truck or tow truck services shall provide a vehicle owner the option of paying the fee for vehicle tow service by cash or major credit card.

Sec. 22-209. Penalty.

A violation of this article is punishable by a fine of five hundred dollars (\$500)."

Section 2. That Chapter 22 of the Town of Addison Code of Ordinances shall remain in full force and effect save and except as amended by this Ordinance.

Section 3. That the sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have adopted such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. That this Ordinance shall take effect upon passage and publication as provided by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this _____ day of _____, 2004.

R. Scott Wheeler, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

#R13-3

Towing Company	Phone	Towing Fee	Impound Fee	Storage Fee	PTR Fee*	Total
AJ's Towing	214-372-0733	\$ 151.00	\$ 20.00	\$ 15.00	\$ 91.00	\$ 277.00
VSC Towing	972-444-0055	\$ 95.00	\$ 20.00	\$ 15.00	\$ 93.00	\$ 223.00
Elite Towing	214-428-6900	\$ 82.50	\$ 20.00	\$ 15.00	\$ 91.00	\$ 208.50
North Texas Towing	214-637-9003	\$ 125.00	\$ 20.00	\$ 15.00	\$ 30.00	\$ 190.00
S&J Towing	972-373-8697	\$ 151.00	\$ 20.00	\$ 15.00	\$ -	\$ 186.00
Loop 12 Towing	972-518-1122	\$ 135.00	\$ 20.00	\$ 15.00	\$ -	\$ 170.00
Apollo Wrecker	214-748-9099	\$ 125.00	\$ 20.00	\$ 15.00	\$ -	\$ 160.00

Regulated

State Regulated

State Regulated

*Post Tow Restoration Fee

Council Agenda Item: #R14

SUMMARY:

Approval of a resolution authorizing the City Manager to enter into an agreement with Museums+more LLC to assist the Town in conducting a Strategic Assessment of the proposed Cavanaugh Flight Museum development.

FINANCIAL IMPACT:

Cost of the Strategic Assessment	\$24,000
Expenses not to exceed	\$2,500
Total cost	\$26,500

\$8,000 is due on approval of the agreement and funds are available in the Hotel fund. Funds to complete the project have been budgeted in the FY05 proposed budget.

BACKGROUND:

See attached memorandum.

RECOMMENDATION:

Staff recommends approval.

Memorandum

To: Mayor and City Council

From: Lea Dunn, Deputy City Manager

Date: August 4, 2004

Subject: Strategic Assessment of the Cavanaugh Flight Museum proposal

As Council is aware the Town has provided marketing support to the Cavanaugh Flight Museum for a number of years. During these years there have been a number of conversations with the Flight Museum staff about developing a more permanent relationship between the Town and Museum by working collaboratively to design and build a state of the art museum complex. Approximately a year ago, attorneys for the Cavanaugh Flight Museum provided a draft term sheet for the development and construction of a new flight museum.

Staff has spent the last four months visiting a number of air museums, interviewing a number of individuals in the museum business as well as consultants who assist organizations in all aspects of museum development. It became clear from these various meetings and trips that before the Town could begin to address the terms proposed by the Cavanaugh Flight Museum, a number of key questions had to be addressed. Staff interviewed and requested proposals from several firms who have experience in this field. Based on those interviews and proposals, staff determined that Dave Ucko of Museums+more LLC was the best qualified to assist the Town with the strategic assessment.

The proposed study will take approximately five months and will assess and make recommendations as it relates to the Museum in the following areas: strategic niche and mission; audience and marketing; museum site and airport; museum facilities; governance and management; exhibits and collections; educational programs; museum operations; finance, earned income and fundraising; synergies with the Arts and Events District; and partnerships with other organizations. Total cost of the study is \$24,000 plus expenses not to exceed \$2,500. Staff recommends approval. If you have any questions, please let me know.

PROPOSAL TO THE TOWN OF ADDISON

Aviation Museum Strategic Assessment

Museums+more LLC

Situation

Only 4.3 square miles in area, the Town of Addison, Texas (Addison) contains an unusually large number of restaurants (170) and hotels (22), as well as a very active program of special events that serves the North Texas region and beyond. As a result, Addison is vitally interested in enhancing tourism and allocates funds from a hotel tax for this purpose. Addison Airport, occupying about one-fourth of the town and one of the busiest general aviation airports in the nation, leases four airplane hangers to the Cavanaugh Flight Museum (Museum). The Museum, which displays some 35 military aircraft primarily from World War II and the Cold War periods, has proposed to Addison the joint development of an expanded and improved facility. Addison seeks professional guidance for making critical planning decisions regarding this potential new aviation museum facility.

Objectives

Museums+more LLC (M+m) offers to assist Addison by carrying out a Strategic Assessment that identifies the key issues, challenges, and opportunities presented by the proposed Museum development. M+m will prepare a comprehensive analysis that will help Addison establish realistic expectations concerning the potential benefits, along with accompanying risks and liabilities. It will provide a framework and recommendations for making decisions about the prospect of taking the Museum to the next level as an educational and cultural attraction. This Strategic Assessment will lay the groundwork for more detailed planning should Addison choose to proceed further.

Methods

M+m proposes the following specific activities to carry out the project objectives:

Phase One: Orientation (complete)

In this initial phase, M+m will visit Addison and the Museum to obtain an overview of key factors that will shape the project. This phase was carried out on June 30, 2004.

Phase Two: Research

Additional visits will be made to Addison to gather more detailed information, visit potential competitors and partners, and meet with members of the project team. Museum representatives will be interviewed in greater depth to determine internal strengths and weaknesses as well as external threats and opportunities. Related institutions in the Dallas-Ft. Worth metroplex (such as the Frontiers of Flight Museum, American Airlines,

C.R. Smith Museum, and Vintage Flying Museum) will be visited and assessed. The data gathered orally, in written form, and through observation will be organized and reviewed.

Phase Three: Comparable Institutions

Parameters will be identified for determining the most appropriate organizations (regionally or nationally) to which the programs and operations of the Museum can be compared. M+m is a sustaining member of the Association of Science-Technology Centers and will make use of its data base and other sources in selecting three comparable institutions based on size, location, type of operation, budget, audience, and other factors. M+m will then gather the data to be used to make comparisons, along with other information when available. (*Note: It is likely that those organizations agreeing to provide data will request a summary of the comparative results in return for their participation.*) Comparative metrics will be developed using the data obtained from the Museum and the other institutions. This data will be analyzed and summarized in tabular form. It will provide evidence from which recommendations can be made regarding potential Museum programs and operations.

Phase Four: Assessment

M+m will prepare a planning framework for Addison for considering and making decisions regarding Museum options. It will raise critical issues and make recommendations related to the following:

- Strategic niche and mission
- Audience and marketing
- Museum site and airport
- Museum facilities
- Governance and management
- Exhibits and collections
- Educational programs
- Museum operations
- Finance, earned income, and fundraising
- Synergies with Arts and Events District
- Partnerships with other organizations.

M+m also will analyze the preliminary Term Sheet proposed by the Museum in light of these issues. Potential risks will be identified and next steps suggested.

A Preliminary Report summarizing the findings and recommendations in each of these areas will be transmitted to Addison for review and feedback. M+m will present an overview of this Strategic Assessment to representatives of Addison on site and lead a day-long discussion of key issues based on the preliminary report.

Phase Five: Review

Comments and suggestions for revising the Preliminary Report will be obtained from Addison through this meeting and subsequent review. Based on this input, M+m will prepare and transmit a detailed Final Report (one original and three copies).

Accountabilities

Specific dates for implementation will be determined by mutual agreement. The period of time necessary to complete this scope of work is approx. five months.

Addison will be responsible for providing necessary documents, support, and information; informing others of the project as needed; providing contact information and introductions; responding in a timely manner for input and review of Preliminary Report; adhering to payment schedule.

M+m will be responsible for carrying out all the activities called for in this proposal; adhering to the project schedule; approving all required Addison agreements; providing updates upon request. M+m will maintain insurance coverage at the levels shown:

Auto	State Farm	\$250,000/\$500,000	#33408B2709B
Business/Office	State Farm	\$1 million	#966582202
Umbrella	State Farm	\$2 million	#09BM98602

Coverage and conditions afforded by these policies will not be suspended, voided, canceled or modified during this project.

We will both inform each other immediately of any unforeseen changes, new developments or other issues that impact the proposed work so that we can adjust accordingly; we will accommodate each other's unexpected scheduling conflicts.

Terms and Conditions

The fee for carrying out all the services described in this agreement is \$25,500. A \$1,500 credit will be applied based on the completion of phase one, reducing the total to \$24,000 plus expenses.

Project expenses, billed on a reimbursement basis, are not expected to exceed \$2,500. Travel cost for the site visit will be based on coach class air fare, economy car rental, lodging, meals, and related expenses.

M+m does not bill for local travel, delivery service, fax, telephone, routine copying, administrative work, or related office expenses.

Payment of one-third is due upon signing. The balance of payments will be due upon receipt of statement for services rendered at final completion. Addison may apply a discount of 1% from statement amount if paid in full within 7 days of notice; payments 30 days or more past due accrue interest from statement date at 2% per month. In connection with requested payments, M+m will provide to Addison (i) a description of the work performed to which the requested payment relates, (ii) an itemized statement of any reimbursable costs and expenses incurred, (iii) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (iv)

any such additional documents or materials as Addison may reasonably request in connection therewith.

The quality of our work is guaranteed. Addison will have full ownership of and all rights in the work produced under this agreement after payment for such work.

Additional terms and conditions of this agreement are set forth in Exhibit A attached hereto, which Exhibit is incorporated herein and made a part hereof for all purposes. The qualifications of David Ucko, Ph.D., President of Museums+more LLC, is attached hereto as Exhibit B.

While carrying out the terms of this agreement, M+m will not charge any fees nor seek compensation of any kind for representational services involving the federal government or services related to the National Science Foundation.

This proposal constitutes our entire agreement for services to be provided.

Acceptance

The signatures below indicate acceptance of the details, terms, and conditions in this proposal, and provide approval to begin work as specified, following initial payment.

For Museums+more LLC:

EIN: 31-0941855

David A. Ucko, Ph.D.	Date
President	

For Town of Addison:

Lea Dunn	Date
Deputy City Manager	

Exhibit A
to Aviation Museum Strategic Assessment Agreement

The following terms and conditions are incorporated into and made a part of the Museum Strategic Assessment Agreement between Museums+more LLC and the Town of Addison, Texas, to which this Exhibit A is attached:

1. Termination.

(a). *Without cause.* Either party may terminate this agreement at any time by giving to the other party at least 30 days written notice of such termination. In the event of termination or upon the expiration of this agreement, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by M+m shall be and become the property of Addison and M+m shall promptly deliver such items to Addison.

(b) *With cause.*

(i) If (a) M+m fails to perform M+m's duties to the satisfaction of Addison, or (b) if M+m fails to fulfill in a timely and professional manner M+m's obligations under this agreement, or (c) if M+m shall violate any of the terms or provisions of this agreement, or (d) if M+m, M+m's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon Addison, as determined solely by Addison, Addison shall have the right to terminate this agreement effective immediately upon Addison giving written notice thereof to M+m.

(c) In the event of termination, M+m shall be compensated for services properly performed prior to termination, together with reimbursable expenses then due. If Addison has compensated M+m for work not yet performed, M+m shall promptly return such compensation to Addison in the event of such termination. Upon the giving of any notice of termination hereunder, M+m will stop work as specified in the notice in an orderly and expeditious manner. In the event of such termination, M+m shall deliver to Addison all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports photographs or other items, in whatever form or format, prepared by M+m in connection with this Agreement and the Project.

2. Relationship of Parties. M+m is and shall be during the entire term of the Agreement an independent contractor, and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow Addison to exercise discretion or control over the professional manner in which M+m performs the services which are the subject matter of the agreement; provided always however that the Services to be provided by M+m shall be provided in a manner consistent with all applicable standards, regulations, and laws governing such services.

3. Indemnity.

(A) IN CONSIDERATION OF THIS AGREEMENT, M+M AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH M+M'S PERFORMANCE OF THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(B) WITH RESPECT TO M+M'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), M+M SHALL HAVE NO DUTY TO INDEMNIFY AN INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE. IF AN INDEMNITEE SUFFERS OR INCURS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF BOTH M+M AND THE INDEMNITEE, M+M'S INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO M+M'S OWN PERCENTAGE OF RESPONSIBILITY.

(C) THE TERMS AND OBLIGATIONS OF THIS INDEMNITY SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

4. Findings Confidential. No reports, information, documents, or other materials given to or prepared by M+m under this agreement which Addison requests in writing to be kept confidential, shall be made available to any individual or organization by M+m without the prior written approval of Addison.

5. Authority to Execute. The officers and/or agents of the parties hereto executing this agreement are the properly authorized officials and have the necessary authority to execute this agreement on behalf of the parties hereto.

6. Assignment. Inasmuch as this agreement is intended to secure the specialized services of M+m, M+m has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of Addison, and any such assignment, transfer, delegation, subcontract or other conveyance without Addison's prior written consent shall be considered null and void.

7. Rights and Remedies Cumulative; Non-Waiver. The rights and remedies provided by this agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law

statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or option given to it by this agreement, or to insist upon strict compliance with the terms of this agreement, shall not constitute a waiver of the terms and conditions of this agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this agreement shall survive the cancellation, expiration or termination of this agreement.

8. Applicable Law; Venue. In the event of any action under this agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this agreement.

9. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

10. No Third-Party Beneficiaries. This agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11. Notice. For purposes of this agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given upon receipt. Addresses for notice are as follows:

<u>To Addison:</u>	<u>To M+M:</u>
Town of Addison, Texas 5300 Belt Line Road Dallas, TX 75254 Attn: Lea Dunn	_____ _____

12. Entire Agreement and Modification. This agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

Exhibit B
to Aviation Museum Strategic Assessment Agreement

Qualifications

David Ucko has devoted his career to creating ground-breaking educational experiences and attractions. He has managed their development from vision to execution—concept and planning through implementation and operation—on small to large scale. Through exhibits, media, shows, publications and entire museums, Ucko has engaged diverse audiences with content from science, technology and health to history and social impact.

Museums+more LLC was formed and registered in the District of Columbia in 2002 as a means for Ucko to share his expertise with others. He assists organizations with planning, innovation, and sustainability through creating competitive advantage, developing recreational learning experiences, and offering leadership counsel. Recent projects have included advancing The National Public Health Partnership for the National Health Museum (Washington, DC); guiding the U.S. Department of Energy on interpreting the Manhattan Project in Oak Ridge, TN; advising the Children's Science Explorium for the City of Boca Raton, FL; planning renewal of the East Texas Oil Museum for Kilgore College; and helping conceptualize a major national traveling exhibition for the Arizona Science Center. Other clients include the City of Rockville, MD (Rockville Science Center); Museum of Discovery (Little Rock, AR); and the Chemical Heritage Foundation (Philadelphia, PA). Ucko also has been assisting the National Science Foundation as Program Director for Informal Science Education.

Highlights prior to formation of his consulting practice include:

Developed strategic educational niche for national outreach. As first Executive Director for a new National Academy of Sciences museum, Ucko established its direction as “wholesaler” of the best research underlying current issues in science and technology.

Led major educational attraction from conception through operation. As founding President of Science City at Union Station, Ucko spearheaded the decade-long development of this educational attraction, linchpin for the transformation of Kansas City’s historic landmark into a \$250+ million mixed-use urban entertainment center; included raising \$100+ million private funds.

Conceived pioneering “recreational learning” approach. While serving as Kansas City Museum President, Ucko created the novel Science City concept of engaging visitors in learning adventures by combining hands-on discovery from science centers with immersive environments from theme parks and costumed role-playing characters from theater.

Established new exhibit directions. As Vice President for Chicago’s Museum of Science and Industry and Deputy Director for the California Museum of Science and Industry, Ucko produced innovative interactive exhibitions such as “My Daughter, the Scientist,” “Technology: Chance or Choice?,” “HealthWorks,” and many others.

Created novel learning approaches. As professor at Antioch and CUNY, Ucko published textbooks and created self-teaching A/V modules that enhanced student learning.

Based on these and other achievements, Ucko has been recognized through:

- Presidential appointment, confirmed by the U.S. Senate, to the 15-member National Museum Services Board, which guides the Institute of Museum and Library Services;
- Designation as a Fellow by American Assn. for the Advancement of Science;
- Inclusion by *The Kansas City Star* among “The 150 Most Influential Kansas Citizens”;
- Appointment by the Assn. of Science-Technology Centers to chair its Legislative and Publication Committees and by the American Assn. of Museums to its Accreditation Visiting Committees and Honors Committee;
- Citation in *Who’s Who in America* and other leading biographical references.

David Ucko received his Ph.D. from M.I.T. (1972) and B.A. from Columbia College (1969), where he was named a Woodrow Wilson Fellow. He has completed the Leadership Development Program of the Center for Creative Leadership.

Council Agenda Item: #R15

SUMMARY:

Council approval is requested of a resolution requiring TXU Electric Delivery Company (TXU) to provide the Town information pertaining to the reasonableness of electric rates related to the transmission and distribution of electric power to Addison customers.

FINANCIAL IMPACT:

The Steering Committee of TXU customer cities will fund its activities with a 10¢ per capita assessment. For the Town, this amount is only \$1,468.

BACKGROUND:

With the deregulation of electric power in 2002, Texas electric customers were given bifurcated electric rates. One rate is related to the generation of power and various billing costs that are charged by Retail Electric Providers. This rate is deregulated, with the exception of price-to-beat rates charged by incumbent providers (for north Texas, this would be TXU). The other rate is regulated by the Texas Public Utilities Commission and deals with the transmission and distribution (T&D) of electric power from generating power plants to consumers.

On July 16, 2004, the Steering Committee of Cities Served by TXU met in Arlington to discuss TXU's current T&D rates. The Steering Committee unanimously recommended that cities pass a resolution that requires TXU to show cause why its T&D rates should not be reduced. The T&D rates currently charged by TXU were set by the Public Utility Commission ("PUC") in 2001 in anticipation of the start of retail electric competition. While traditional rate regulation in the public interest is based upon a snapshot of historic costs, the PUC based its 2001 approval of TXU's T&D rates upon *projected* costs and expenses for 2002. Enormous changes have occurred since TXU's T&D rates were approved, including significant decreases in the cost of capital, large reductions in TXU's costs and expenses, mass TXU employee layoffs, and a complete change in TXU affiliate transactions. As a result, it is likely that TXU's current T&D rates are excessive. Since T&D rates typically comprise one-half of a total electric bill, curbing excessive T&D rates will reduce the high cost of street lighting and other off-peak load. A rate review of TXU's T&D rates also permits the investigation of unfair and/or irrational costs that are currently reflected in off-peak tariffs, as well as other service standards issues.

The attached resolution will set in motion a process that will:

1. Require TXU to file actual financial and operation information for the 12-month period ending June 30, 2004, consistent with the format dictated by the PUC, to justify the reasonableness of its existing T&D rates.
2. Establishes a procedural schedule for TXU's filing of rate information, the City's response and recommendation regarding TXU's filing, TXU's rebuttal to the City's recommendation, a public hearing regarding the reasonableness of TXU's

existing rates, and if necessary, the setting of new T&D rates to be charged by TXU.

3. Ratifies the Steering Committee's selection of legal counsel and affirms the oversight and direction provided by the Steering Committee for the attorneys and consultants who will analyze the reasonableness of TXU's existing rates, and represent the City upon related appeals.

It is unusual for cities to instigate a rate review. For the past few years, we have always responded to TXU's rate filings to the PUC for increased rates. However, since TXU is believed to be over recovering with their existing rates, the cities have to initiate the process. Because it would be burdensome for TXU to respond to each and every city's request for information, the resolutions passed by Addison and the scores of other cities represented by the Steering Committee will likely force TXU to submit a consolidated rate filing to the PUC.

RECOMMENDATION:

It is recommended Council approve the attached ordinance.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF ADDISON, TEXAS DIRECTING TXU ELECTRIC DELIVERY COMPANY TO FILE CERTAIN INFORMATION WITH THE TOWN OF ADDISON AS SET FORTH HEREIN; SETTING A PROCEDURAL SCHEDULE FOR THE GATHERING AND REVIEW OF NECESSARY INFORMATION IN CONNECTION THEREWITH; SETTING DATES FOR THE FILING OF THE CITY'S ANALYSIS OF THE COMPANY'S FILING AND THE COMPANY'S REBUTTAL TO SUCH ANALYSIS; RATIFYING THE HIRING OF LEGAL COUNSEL AND CONSULTANTS; RESERVING THE RIGHT TO REQUIRE THE REIMBURSEMENT OF THE CITY'S RATE CASE EXPENSES; SETTING A PUBLIC HEARING FOR THE PURPOSES OF DETERMINING IF THE EXISTING RATES OF TXU ELECTRIC DELIVERY COMPANY ARE UNREASONABLE OR IN ANY WAY IN VIOLATION OF ANY PROVISION OF LAW AND THE DETERMINATION BY THE CITY OF JUST AND REASONABLE RATES TO BE CHARGED BY TXU ELECTRIC DELIVERY COMPANY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") is a regulatory authority under the Public Utility Regulatory Act (PURA) and has original jurisdiction over the rates of TXU Electric Delivery (TXU) to determine if such rates are just and reasonable; and

WHEREAS, Sections 33.021, 36.003 and 36.151 of PURA empowers a regulatory authority, on its own motion or on a complaint by any affected person, to determine whether the existing rates of any electric utility for any service are unreasonable or in any way in violation of any provision of law, and upon such determination, to determine the just and reasonable rates; and

WHEREAS, the City has reason to believe that TXU is overearning and its rates are excessive; and

WHEREAS, the City is a member of the Steering Committee of Cities Served By TXU; and

WHEREAS, the Steering Committee of Cities Served by TXU has unanimously recommended that cities pass a resolution that requires TXU to show cause why its transmission and distribution rates should not be reduced; and

WHEREAS, the Town of Addison and the City Council of the City desires, on its own motion, to exercise its authority under Sections 33.021, 36.003 and 36.151 of PURA; and

WHEREAS, a procedural schedule should be established for the filing of certain information by TXU, procedures to be followed to obtain and review information from TXU, the filing of an analysis of such information by the City, the filing of rebuttal information from TXU, and a public hearing at or following which time the City shall make a determination whether the existing rates of TXU are unreasonable or are in any way in violation of any provision of law and if such rates should be revised and just and reasonable rates determined for TXU.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. This Resolution constitutes notice of the Town of Addison, Texas' ("City") intent to proceed with an inquiry into the transmission and distribution rates charged by TXU Electric Delivery (TXU). On or before November 30, 2004, TXU shall file with the City information that demonstrates good cause for showing that TXU's transmission and distribution rates should not be reduced. Specifically, TXU shall file with the City information for the test year beginning July 1, 2003 and ending June 30, 2004, regarding TXU's cost of service elements, including, but not limited to the elements detailed by the Public Utility Commission as necessary for the filing of a Statement of Intent to Change Rates.

Section 2. The City's designated representatives shall have the right to obtain additional information from TXU through the filing of requests for information, which shall be responded to within fifteen (15) days from the receipt of such request for information.

Section 3. City's designated representatives shall file their analysis of TXU's filing and information on or before December 29, 2004.

Section 4. TXU shall file any rebuttal to the analysis of City's representatives on or before January 7, 2005. With its rebuttal, TXU may present whatever additional information it desires to defend its current rates.

Section 5. A public hearing shall be conducted by the City Council for the Town of Addison, Texas on January 25, 2005, during the regular City Council meeting scheduled to commence at 7:30 p.m. At such hearing a representative of TXU and a representative of the City consultants will each be allowed to address the City Council and summarize previously filed reports for no more than 15 minutes. Based upon such hearing, a determination of the reasonableness of the existing rates of TXU shall be made by the City Council and, if necessary, just and reasonable rates shall be determined to be thereafter observed and enforced for all services of TXU within the Town of Addison, Texas.

Section 6. The City Council may, from time to time, amend this procedural schedule and enter additional orders as may be necessary in the public interest and to enforce the provisions hereof.

Section 7. Subject to the right to terminate employment at any time, the City hereby ratifies the Steering Committee's selection of Geoffrey Gay and Kristen Doyle with the law firm

of Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend as legal counsel to assist the City in its ratemaking and to prosecute any appeals to the Texas Public Utility Commission or court.

Section 8. Fees and expenses of attorneys and consultants assisting the City in the Steering Committee's review of the reasonableness of TXU's rate will be processed through the Steering Committee, but the City reserves the right to seek reimbursement from TXU pursuant to the PURA Section 33.023.

Section 9. That it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public as required by law.

Section 10. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the ____ day of August, 2004.

R. Scott Wheeler, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

Council Agenda Item: #R16**SUMMARY:**

Consideration of a resolution regarding certain matters pertaining to a Ground Lease at 4575 Claire Chennault on Addison Airport between the Town, as Landlord, and Aquila Leasing, Inc., as Tenant (Assignor), and C. C. Hangar, L.P. (Assignee). C.C. Hangar, L.P. requests for Landlord approval of: (i) First Amendment to Ground Lease, (ii) Proposed Structural Improvements, and (iii) Creation of a Leasehold Mortgage.

BACKGROUND:

Aquila previously petitioned and received the City Council's consent (# R04-043) to the assignment of their leasehold estate to C. C. Hangar, L. P. (Assignee). Although the actual conveyance of the real property is still pending, Aquila and C. C. Hangar are jointly bringing forth the following for council's consideration and approval.

C. C. Hangar proposes constructing structural and architectural improvements to the demised premises as more fully described in the Airport Director's attached memorandum at an estimated cost of \$350,000. In consideration of the proposed improvements and other value given including a Lease Guaranty, the Assignee requests the City to agree to the First Amendment to the Ground Lease (summarized in attached Exhibit 2). Among other things, the First Amendment to the Ground Lease extends the term of the Ground Lease an additional 96 months or eight years.

C. C. Hangar also requires the creation of a leasehold mortgage subordinate to the ground lease to secure the financing of the leasehold acquisition and cost of constructing the improvements to the property. But until the City affirms the First Amendment with the lease extension, the lenders are reluctant to underwrite the loan. For this reason, C. C. Hangar is requesting the City to consent to the leasehold mortgage on the condition that should the lender require an estoppel letter, their letter must be substantially in the form of and materially the same as that which is presented as Exhibit 3 and; the document, in its final form, must be reviewed and approved by the City Attorney.

RECOMMENDATION:

Airport Management recommends the City consent to the structural and architectural improvements to the leased premises as proposed by C. C. Hangar subject to the terms and conditions of the proposed First Amendment to the Ground Lease. Airport Management also recommends the City consent to the creation of the leasehold mortgage and authorizes the City Manager to execute the estoppel letter once considered acceptable by the City Attorney.

Staff recommends approval.

Attachments: Lisa Pyles - Memorandum

Exhibit 1 – Map – View of subject property

Exhibit 2 – First Amendment & Ground Lease

Exhibit 3 – Estoppel Letter

Exhibit 4 – Proposed site plan – 4575 Claire Chennault

Exhibit 5 – Vigor Properties, Inc. Lease Guaranty

Memorandum

To: Mark Acevedo, Director
General Services - Town of Addison

From: Lisa Pyles, Airport Director

Cc: Bill Dyer, Real Estate Manager

Date: July 21, 2004

Re: Ground Lease 0080-2501 (GL 25)
ASSIGNOR: **AQUILA LEASING, INC.**
ASSIGNEE: **C. C. HANGAR L. P.**
Assignee's Request for Landlord's Approval of:

- 1) First Amendment to Ground Lease;
- 2) Proposed Structural Improvements;
- 3) Creation of a Leasehold Mortgage

Schedule of Exhibits

Exhibit 1: Location Map & Aerial View of Subject Property

Exhibit 2: First Amendment Agreement & Ground Lease

Exhibit 3: Estoppel Letter

Exhibit 4: Proposed Site Plan for 4575 Claire Chennault

Exhibit 5: Vigor Properties, Inc. Lease Guaranty

Summary of Requested Action and Recommendation by Airport Manager

Aquila Leasing, Inc. ("Aquila" or "Tenant") is the current ground lease tenant for the leased premises located at 4575 Claire Chennault. Aquila previously petitioned and received the City's consent (# R04-043) to the assignment of their leasehold estate to C. C. Hangar, L. P. (hereafter referred to as "C. C. Hangar" or the "Assignee"). Although the actual conveyance of the real property is still pending, Aquila and C. C. Hangar are jointly bringing forth the following for council's consideration and approval.

Soon after taking possession of the property, C. C. Hangar proposes constructing structural and architectural improvements to the demised premises as more fully described below at an estimated cost of \$350,000. In consideration of the proposed improvements and other value given including a Lease Guaranty, the Assignee requests the City to agree to the First Amendment to the Ground Lease (summarized below and attached as Exhibit 2). Among other things, the First Amendment to the Ground Lease extends the term of the Ground Lease an additional 96 months or eight years.

C. C. Hangar also requires the creation of a leasehold mortgage subordinate to the ground lease to secure the financing of the leasehold acquisition and cost of constructing the improvements to the property. But until the City affirms the First Amendment with the lease extension, the lenders are reluctant to underwrite the loan. For this reason, C. C. Hangar is requesting the City to consent to the leasehold mortgage on the condition that should the lender require an estoppel letter, their letter must be substantially in the form

of and materially the same as that which is presented as Exhibit 3 and; the document, in its final form, must be reviewed and approved by the City Attorney.

Airport Management recommends the City consent to the structural and architectural improvements to the leased premises as proposed by C. C. Hangar subject to the terms and conditions of the proposed First Amendment to the Ground Lease. Airport Management also recommends the City consent to the creation of the leasehold mortgage and authorizes the City Manager to execute the estoppel letter once considered acceptable by the City Attorney.

The City's Attorney has reviewed and approved the attached documents (except for the estoppel letter in its final form) which are to be executed in escrow during the closing and conveyance of the property.

Background Information

The subject Ground Lease is for a certain 1.135 acres (49,461 SF) of improved land located at 4575 Claire Chennault. The existing improvements include an 11,000 square-foot hangar and 5,428 square feet of enclosed office space. The premise also includes approximately 15,333 square feet of shared aircraft ramp (subject to a public ingress/egress easement). Please see Exhibit 1 (Location Map and Aerial View of ADS) detailing the location of the subject property as described.

The Ground Lease was entered into by and between AATI and City as Landlord and Parkway Jet, Inc. as the Tenant on September 28, 1983. The lease term commenced September 1, 1984 and is due to expire forty years thereafter or August 30, 2024. On May 7, 1991 the Lease was assigned by Substitute Trustee's Deed to Franklin First Federal Savings Bank ("Franklin"). Franklin then assigned the Lease to Aquila Leasing Inc, ("Tenant") May 13, 1993. Aquila Leasing has entered into sell and assignment agreement with C. C. Hangar L. P. The City has already consented to the assignment of the Ground Lease to C. C. Hangar under R04-043 on June 8, 2004.

The current annual ground rental is \$16,862 per year, which equates to approximately \$.34 per square foot which is consistent with the prevailing market.

Chain of the leasehold ownership is as follows:

Assignor	Assignee	Date of Assignment
Parkway Jet, Inc.	Franklin First Federal S. B. by Substitute Trustee Deed	May 7, 1991
Franklin First Federal S. B.	Aquila Leasing Company	May 13, 1993
Aquila Leasing Company	C.C. Hangar L. P.	Pending

Summary of Current Ground Lease Terms

<i>Name of Tenant</i>	<i>Description</i>
Name of Tenant	Aquila Leasing Co.
Doing Business As	Interjet
Lease #	GL67 0670-6701
Lease Type	Ground Lease
Other Lease Ref. or ID	
AA Survey Lot Reference	Lease Tract # 67
Property Name	Aquila Leasing Co.
Legal Address (1)	4575 Claire Chennault
Primary Contact	Mr. Byron Hoffman
Contact Phone #	972-931-8889
On-Property Address	V-10
Brief Description of Premises	1 Metal hanger w/office associated aircraft ramps and vehicle parking.
Land Area (SF)	49,461 SF (1.135 Acs.)
Building Area (SF)	16,428
Office	5,428
Hangar/Air Serv.	11,000
Other	
Ramp Area (SF)	15,333 subject to shared ramp easement

Lease Commencement Date	9/1/1984
Lease Expiration Date	8/30/2024
Current Annual Rental Rate	\$16,862.16 (\$1,405.18/mo)
Rental Rate/Building Area SF	\$.95/SF
Rental Rate/ Land Area SF	\$.34/SF
Lease Amendment	None
Last CPI Adjustment Date	9/1/2002.
Next CPI Adjustment Date	9/1/2004
Tenant's Permitted Use of Premises including any Exclusivity & Restrictions:	Section 6: Only for the sale of aircraft and aircraft parts, aircraft maintenance and repair, aircraft storage, aircraft training, aircraft charter, and aircraft rentals and not otherwise without written consent of Landlord.

Current Status:

The Ground Lease tenant is current on all rents and is in good standing with the Airport.

The subject property is located along side and towards the eastern end of Taxiway Victor. This portion of the airport is recognized for its offering of upper scale aircraft storage and executive office space. Million Air and Addison Express, two of the airport's major

FBOs, are located at the taxiway entrance. Surrounding the remainder of the taxiway are full-service corporate and executive aviation facilities such as Mission Aire V (4400 Westgrove), 4444 Westgrove (a mid-rise multi-tenant office and hangar building) and 4585 Claire Chennault, a three-unit executive hangar/executive office complex. IN addition, Mission Aire has plans to expand their existing complex with another 36,000 square feet of hangar and 14,000 square feet of office space.

C.C. Hangar's proposed redevelopment and use of the subject property as a executive aircraft storage and hangar facility is consistent with and complements the neighboring properties, and is in keeping with long-term strategy plan for the Airport.

The subject and its adjacent properties are encumbered with several shared ramp ingress/egress easements. Generally these easements restrict the unattended parking of aircraft on the ramp. The use of these properties for low-density, upper-scale aircraft storage is well suited in consideration of this restriction.

Analysis of Leased Estate Valuation to Landlord

An estimated valuation of the Landlord's interest in the leased estate based upon the terms and conditions of the Ground Lease and other salient facts are as follows:

Estimated remaining rent obligation over the term of the lease ¹	\$419,368
Net Present Value (NPV) of these rental payments ²	\$175,642
Estimated value of Existing Improvements ³	\$553,718
Total estimated value of leased fee interest	\$729,360

Note 1: As of 07/14/2004 and assumes no change to lease terms, CPI increase of 3% every two years

Note 2: Based upon 10% discount rate

Note 3: Source is the Marshall & Swift Commercial Estimator for Commercial Property

The estimated value of the improvements exceeds the present value of the remaining rental payments due over the term by 3.2 times.

Information Regarding the Assignee

C.C. Hangar L. P. is a limited partnership by and between:

<u>Partner</u>	<u>Percentage Interest</u>
• Vigor Properties, Inc. as the General Partner	.05%
• Howard D. Kollinger, Limited Partner	95.00%
• 2001 Trevor Lee Kollinger Trust, Limited Partner	2.25%
• 2001 Matthew Bernard Kollinger Trust, Limited Partner	2.25%

The stated purpose of the partnership is to "acquire by assignment the Ground Lease and to hold, develop, own, operate and maintain, manage, lease, and otherwise deal with the real property located at 4575 Claire Chennault at Addison Airport." Vigor Properties will office on the premises upon the completion of the remodeling project and will be responsible for the management and leasing of the facility on behalf of C. C. Hangar.

Vigor intends to market and lease available hangar space to able Design Group I and selected Design Group II aircraft with a wingspan not greater than 70 feet and a vertical tail clearance of 25 feet.

Howard D. Kollinger is Chairman of Vigor Properties, Inc., a Plano-based real estate development, investment and management company founded in 1992. The company specializes in commercial real estate development and investments. Since its inception, the company has developed, bought or sold commercial properties valued in excess of \$300,000,000.

Reported Financial Condition of Assignee

C. C. Hangar, L. P. is a limited partnership created specifically to acquire and to hold the leased premises. For this reason, financials for this entity are not available for review. As a limited partnership, the general partner and limited partners are generally not individually liable for the performance of the partnership.

In order to induce the City to execute the First Amendment to the Ground Lease, Vigor Properties, Inc., has offered an unconditional, irrevocable Lease Guaranty (Exhibit 5) that obligates Vigor to guarantee the payment and performance of the Limited Partnership under the Ground Lease.

Description of Proposed Architectural and Structural Improvements

Shortly after taking possession of the leased premises, C. C. Hangar desires to make certain improvements to the premises that will greatly enhance the appearance and value of the real property.

C. C. Hangar proposes to expand the existing 11,000 square-foot hangar with 3,000 square feet of additional clear-span hangar space. In addition to extensive interior modifications and improvements to the split-level offices, a new two-story aluminum and glass lobby tower with elevator will be added at the southwest intersection of the existing office and hangar expansion. The tower will provide added accessibility to the building, screening of the HVAC equipment, and will enhance the building's drive-up appeal and approach from the street and Taxiway Victor.

A parapet wall will be added to modify the building roofline to provide a more contemporary style. The offices that overlook Taxiway Victor, the restrooms and common areas will all be completely refurbished as more efficient and marketable executive office space. The existing and new hangar space will receive a chemical resistant floor coating and improved lighting throughout. Total projected cost for all these improvements is anticipated to exceed \$350,000.

C. C. Hangar also proposes to work with the Airport to develop a landscape buffer along the southwest fence line between the parking area and the existing North Tie-Down ramp area to further enhance the property's appeal. C. C. Hangar also proposes building a

monument sign along Claire Chennault at the property's entrance as identified on the proposed site plan.

When completed, this first-class hangar/office addition and renovation will greatly enhance and complement the neighboring facilities. The proposed redevelopment is consistent with the Airport's Master Plan and long-term strategic objectives for the Airport.

Summary of the First Amendment

The following are the main elements of the First Amendment to the Ground Lease

1. Tenant is to provide an As-Built survey upon completion of the improvements. The As-Built survey will be made part of the Amendment and the description contained therein supercedes the description of the Demised Premises.
2. The rental rate which, at time of this Amendment, is equal to \$.34 per square foot of land remains unchanged and subject to adjustment in accordance with the Ground Lease. The next such adjustment to rent is to be made September 1, 2004.
3. The original forty-year term of the Ground Lease is scheduled to expire August 31, 2024. The First Amendment extends the term 96 months (8 years) or until August 31, 2032, if and only if:
 - a) Tenant has completed the construction of the improvements on or before August 1, 2005.
 - b) Tenant presents evidence in writing to Landlord that the construction value of the improvements exceeds \$350,000.
 - c) Tenant is not in default at time Landlord issues a letter satisfying these and other conditions of the Amendment.
4. Tenant is responsible for obtaining, at its sole cost and expense, all governmental licenses, permits and approvals necessary for the construction and occupancy of the premises.
5. Paragraph 9 of the Ground Lease is amended to include Landlord's consent to the change of ownership or voting control of stock in excess of 51%.
6. Paragraph 9 of the Ground Lease is further amended to allow the Tenant to create a leasehold mortgage for the purpose of: i) to obtain funds for the construction of the improvements, ii) acquisition of the leasehold estate, iii) other construction of improvements to the premises approved by Landlord, iv) other purposes as approved by Landlord from time to time.
7. Insurance types and limits are modified to be consistent to current airport standards and give the Landlord the right to review and reasonably adjust these limits and types as determined necessary.
8. The Airport Minimum Standards and Rules and Regulations are made by reference a part of the Ground Lease.

9. The Amendment also contains language regarding indemnity and exculpation of Landlord and Manager, Tenant's obligation with respect to environmental matters, and Landlord's right to hold special events to reflect the City's current standards.

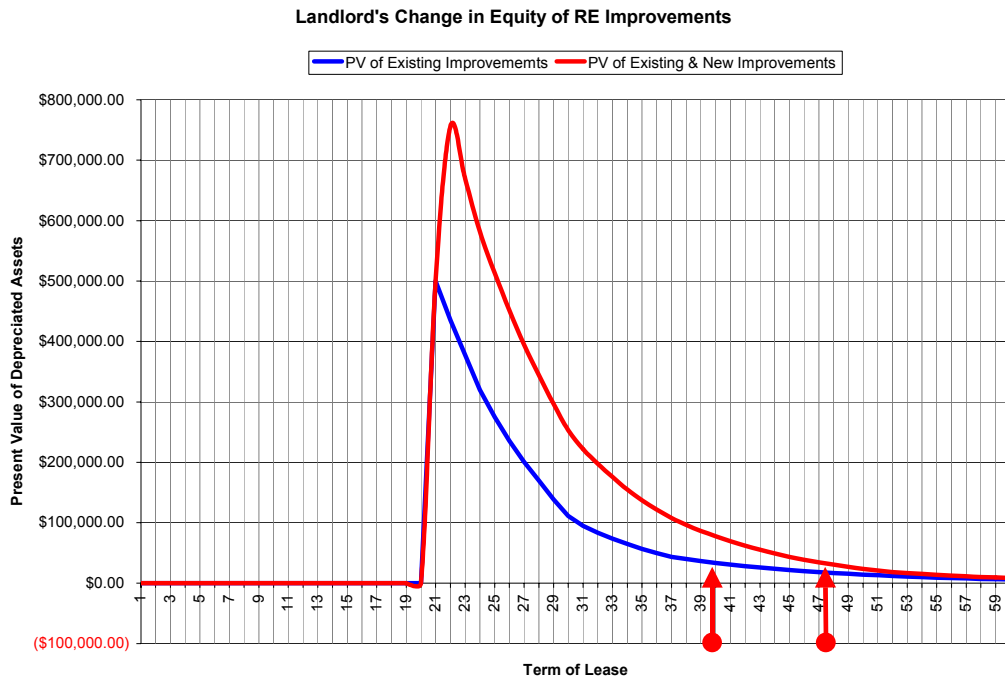
Justification and Support for the Extended Lease Term

C. C. Hangar is requesting the City to agree to an eight-year extension to the Ground Lease. Airport Management has reviewed C. C. Hangar's request and have given consideration to the Airport's prevailing leasing policy, the financial impact to the Airport, the effect the extension may have with respect to surrounding properties and their long-term use, and other strategic considerations set forth in the Master Plan.

The City currently relies on the Revised Addison Airport Lease Policy adopted in June 1998 by Resolution # R03-087 for its guidance on Ground Lease extension's and renewals. Section VI of the Policy provides for any new expansion of clear-span hangar space up to 9,999 square feet entitles the Tenant to a total of a 25-year term (remaining term plus extension). The City may also grant up to a maximum of five bonus years of lease term for a project that, among other things, makes an exceptional contribution to furthering the City and the Airport's Master Plan objectives.

The current Ground Lease has a term of twenty (20) years remaining. Under the policy, the Tenant qualifies for five (5) additional years because of the expanded hangar space. Considering the improvements will significantly enhance and upgrade the physical, functional and marketable appeal of the property, Airport Management and City staff find the proposed improvements significantly contribute to the City's strategic plans for the Airport worthy of three (3) bonus years. Consequently, the lease term is justified, under the policy, to be the extended eight (8) years with a total remaining term of twenty-eight (28) years from the date of the First Amendment to the Ground Lease.

The extended term of eight (8) years is further supported when employing financial analyses considering the present value of the depreciated real property assets with and without the proposed capital improvements. The difference in the two values represents the change in the Landlord's equity position at the end of the lease term. Provided the Landlord is willing to accept a comparable equity position with or without the value of the improvements, the Landlord is justified in extending the term of the lease, in this case an additional eight (8) years, as consideration to the capital improvements made.



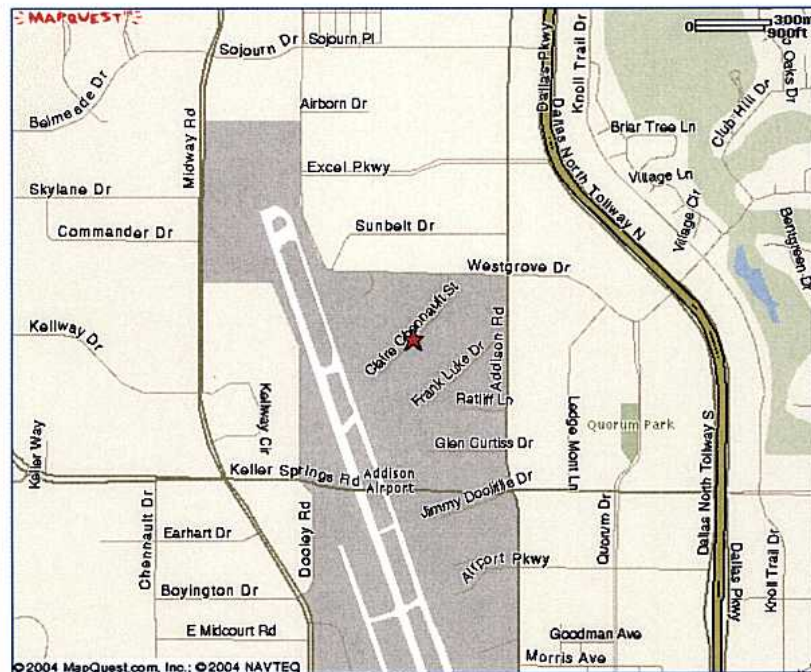
Consideration is also given to what impact, if any, does the extension have on the long-term strategic goals for the airport and land uses in the immediate area. Under some circumstances, it may not be prudent for the Landlord to grant extensions or perpetuate current land uses when strategic plans for the area might be to the contrary. As previously stated the proposed use and development by C. C. Hangar and surrounding properties are consistent with the long-term objectives of the Master Plan. Airport Management does not foresee the requested extension to adversely impact the Airport's long-term objectives.

Conclusion and Recommendation of Airport Management

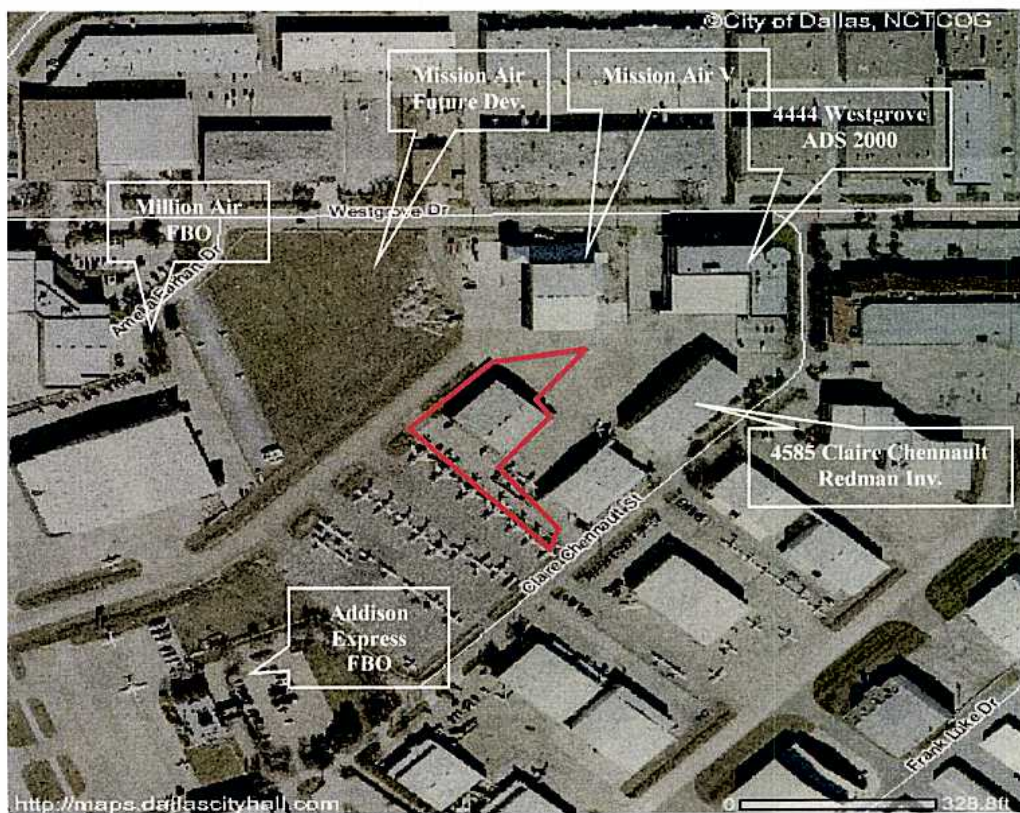
Airport Management recommends the City consent to the structural and architectural improvements to the leased premises as proposed by C. C. Hangar subject to the terms and conditions of the proposed First Amendment to the Ground Lease. Airport Management also recommends the City consent to the creation of the leasehold mortgage and authorizes the City Manager to execute the estoppel letter once considered acceptable by the City Attorney.

Exhibit 1

Location Map



Location Map of Subject Property



Aerial of Subject Property

Exhibit 2

Copy of First Amendment to the Ground Lease to be executed in Escrow

STATE OF TEXAS §
 § **FIRST AMENDMENT TO GROUND**
LEASE
 COUNTY OF DALLAS §

This First Amendment to Ground Lease (hereinafter referred to as the "First Amendment to Ground Lease" or "Amendment") is entered into and effective as of August _____, 2004 between the Town of Addison, Texas a municipal corporation (hereinafter sometimes referred to as "Addison" or the "Landlord"), and C. C. Hangar, L. P., a Texas corporation ("Tenant").

WHEREAS, a Ground Lease was entered into as of September 28, 1983 between the Town (City) of Addison, Texas and Addison Airport of Texas, Inc., together as Landlord, and Parkway Jet, Inc., as Tenant, of a 1.135 acre (49,461 square feet) tract of land located at 4575 Claire Chennault at Addison Airport (the said tract of land being referred to in the Ground Lease and herein as the "Demised Premises" or "demised premises"), which Ground Lease provides that its term commenced on September 1, 1984 (or the first day of the first calendar month the tenant completes certain construction as described in the Ground Lease, whichever is earlier) and will end 480 months thereafter (or on August 30, 2024) (the "Ground Lease", a true and correct copy of which is attached hereto as Exhibit A); and

Schedule of Exhibits

Exhibit A: Copy of Ground Lease dated 9/28/1983
Exhibit B: Copy of Substitute Trustees Deed dated 5/7/1991
Exhibit C: Assignment of Lease dated 5/13/1993
Exhibit D: Assignment of Lease dated _____
Exhibit E: Survey of demised Premises dated _____
Exhibit F: Description of Improvements

WHEREAS, the Ground Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Lease as the "Base Lease" (and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants, and obligations, of the Landlord under the Ground lease; and

WHEREAS, the said Base Lease has expired and the City is the sole Landlord under the Ground Lease; and

WHEREAS, the tenant's leasehold interest in the Ground Lease was thereafter conveyed to Franklin First Federal Savings Bank by Substitute Trustee's Deed executed May 7, 1991 and recorded in Volume 91092, Volume 2558, Deed Records, Dallas County, Texas (a true and correct copy is attached hereto as Exhibit B; and

WHEREAS, the tenant's leasehold interest in the Ground Lease was thereafter assigned by Franklin First Savings Bank to Aquila Leasing Company, a Texas corporation ("Aquila") by that Assignment of Lease dated May 13, 1993 (a true and correct copy of which is attached hereto as Exhibit C); and

WHEREAS, the Ground Lease was thereafter assigned by Aquila to C. C. Hangar, L. P. ("C. C. Hangar"), a Texas limited partnership by that Assignment of Lease dated _____ (a true and correct copy of which is attached hereto as Exhibit D); and

WHEREAS, by virtue of such conveyances and assignments, "C. C. Hangar" is the Tenant under the Ground Lease (and is hereinafter referred to as "Tenant"); and

WHEREAS, Tenant has proposed to construct certain additional improvements on the Demised Premises as described herein, and in connection therewith and as consideration therefor Landlord and Tenant desire to amend the Ground Lease in the manner set forth below, contingent upon the final completion of such additional improvements and the approval thereof by Landlord.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the sum of Ten and No/100 Dollars (\$10.00), the terms and conditions of this Amendment, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Addison, Texas and Tenant do hereby agree as follows:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof.

Section 2. Amendments and Modifications to Ground Lease. The Ground Lease is hereby amended and modified by amending certain paragraphs of the Ground Lease as set forth below, by stating and affirming certain terms in connection with the Ground Lease, and by adding additional provisions to the Ground Lease to read as follows:

A. Description of Demised Premises, Survey; Rent.

1. (a) It is anticipated as of the date of execution of this Amendment that Tenant will be constructing upon the Demised Premises certain Improvements (as described below in Section 2.B. of this Amendment). If Tenant constructs the Improvements in accordance herewith, upon completion of such construction (as evidenced by the issuance of a final certificate of occupancy for the Improvements or such other final certification as may be required by the Town of Addison), Tenant, at its sole cost, shall within thirty (30) days following the date of issuance of such final certificate of occupancy or other certification) procure an As-Built Survey (the "Survey") of the Demised Premises, prepared by a registered surveyor duly licensed in the State of Texas and bearing the surveyor's seal, and which shall reflect the following:

- (i) A certification to the Town of Addison, Texas and to Tenant to the effect that

- (A) the Survey was made on the ground as per the field notes shown thereon and correctly shows the boundary lines and dimensions and the area of land indicated thereon and each individual parcel thereof indicated thereon,
 - (B) the Survey correctly shows the location of all buildings, structures, and other improvements, and visible items on the Demised Premises,
 - (C) the Survey correctly shows the location and dimensions of all alleys, streets, roads, rights-of-way, easements and other matters of record of which the surveyor has been advised or should be aware of affecting the Demised Premises according to the legal description in such easements and other matters (with instrument, book and page number indicated),
 - (D) except as shown on the Survey, no portion of the Property is located within a special flood hazard area, there are no visible easements, rights-of-way, party walls, or conflicts, and there are no visible encroachments on adjoining premises, streets, or alley ways by any of said buildings, structures, or other improvements, and there are no visible encroachments on the Property by buildings, structures, or other improvements situated on adjoining premises, and
 - (E) the distance from the nearest intersecting street and road is as shown on the Survey;
- (ii) The location of all improvements, streets, highways, sidewalks, rights-of-ways and easements appurtenant to, traversing, adjoining or bounding the Demised Premises (which shall show all applicable recording data);
 - (iii) Any encroachments on the Demised Premises and protrusions from or onto adjacent land;
 - (iv) A metes and bounds description of the Demised Premises and the total acres and the total square feet contained therein;
 - (v) The beginning point should be established by a monument located at the beginning point, or be reference to a nearby monument;
 - (vi) The boundary line of highways and streets abutting the Demised Premises and the width of said highways and streets, including any proposed relocation, modification or widening thereof;
 - (vii) The proximity of the Demised Premises from any nearby taxiway and its centerline, Airport Operating Area zones, markings or designations required

by the Airport Director, including the latitude, longitude, site elevation structure height and total structure height as reported on the *Federal Aviation Administration Form 7460 ~ Notice of Proposed Construction or Alteration*; and

(viii) Such other pertinent and salient information as may be required by Landlord.

(b) Upon the Landlord's and Tenant's acceptance of the Survey, it shall be incorporated into and made part of this Amendment as Exhibit E, and the description of the Demised Premises contained therein shall become and be substituted for the description of the Demised Premises as contained in the Ground Lease, subject, however, to any and all currently existing title exceptions or other matters of record, or items or matters which are visible or apparent from an inspection, affecting the demised premises.

2. Rent for the Demised Premises shall be in an annual amount equal to the product of the number of square feet of the Demised Premises (as set forth in the Survey) multiplied by \$.3409 per square foot (as of the date of this Amendment, such annual amount is \$16,862.16, which rent is subject to adjustment as set forth in the Ground Lease. Without offset or deduction, rent shall be paid in advance in monthly installments on or before the first day of each calendar month, determined by dividing the annual rental amount by twelve (12). Landlord and Tenant agree that the rent rate of \$.3409 per square foot is the rent rate as adjusted in accordance with the Ground Lease since the commencement of the Ground Lease, and is subject to further and future adjustment as set forth in the Ground Lease (with the next such adjustment to be made September 1, 2004).

B. Amendment to Paragraph 3. Paragraph 3 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

A. The term hereof shall commence on the earlier of September 1, 1984, or the first day of the first calendar month after Tenant completes the construction hereinbelow described and opens for business at the demised premises (the applicable date being hereinafter referred to as the "Commencement Date"), and shall end 480 months thereafter (subject, however, to the termination provisions of this Lease); provided, however, that any entry upon the demised premises by Tenant prior to the Commencement Date shall be subject to all of the terms and conditions hereof except that rental shall not accrue.

B. Notwithstanding subparagraph A. of this Paragraph 3 and subject to the terms and conditions set forth below, this Lease shall be extended for an additional 96 months from the end of the term described in subparagraph A., so that this Lease shall end on August 30, 2032 (the "Lease Extension Period"); provided, however, that the Lease Extension Period shall become effective if, and only if, Tenant first fully complies with each of the following terms and conditions:

- (i) On or before August 1, 2005:
 - (a) Tenant shall have completed upon the demised premises to the Landlord's satisfaction all of those certain improvements generally described as the Improvements attached hereto (to this Amendment) as Exhibit F (the "Improvements"), and including (without limitation) the completion of the construction of at least 3,000 square feet of additional (new) building, of which at least 3,000 square feet shall be clear span hangar space; and
 - (b) Tenant shall present evidence in writing to Landlord (to the Landlord's satisfaction) that the construction value of the said Improvements exceeds \$350,000. Such evidence shall include, without limitation, true and correct copies of all receipts or other documents or records indicating the nature of the construction work performed, the cost thereof and the amount paid for such construction work; and
- (ii) Tenant shall not, at the time of the issuance of the letter described in subparagraph E. of this Paragraph 3, then be in default of any provision of this Lease beyond any applicable cure period.

C. For purposes of subparagraph B. of this Paragraph 3, the Improvements shall be deemed completed upon the issuance by the Town of Addison, Texas of (i) a certificate of occupancy for such Improvements or such other certification as may be required by the Town of Addison, (ii) the delivery, acceptance and incorporation herein of the Survey as set forth in this Amendment; (iii) the issuance of a letter by Landlord stating that Landlord is satisfied that all such Improvements have been completed to Landlord's satisfaction.

D. Tenant shall, prior to the construction of the Improvements or any other facilities or improvements on the Demised Premises, present to Landlord for Landlord's review and consideration of approval, the plans and specifications for the construction of the Improvements or any other improvements or facilities. For purposes of this subparagraph D., plans and specifications shall be approved by Landlord or by the Town of Addison City Manager's designee. All construction of the Improvements and any other facilities or improvements shall be strictly in accordance with the approved plans and specifications, and such construction shall be in a first class, workmanlike manner. Tenant shall promptly pay and discharge all

costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection with any such construction.

E. Upon the final completion of the Improvements and the presentation of evidence satisfactory to Landlord of the value of the completed improvements, Landlord will issue a letter to Tenant that the terms and conditions precedent to the Lease Extension Period as stated above have been fulfilled, and the Lease Extension Period shall thereafter be in effect. Such letter or letters shall be attached to and shall be made a part of this First Amendment amending the Ground Lease. In the event the Improvements are not completed in accordance herewith, this Lease shall not be extended for the Lease Extension Period.”

C. Amendment to Paragraph 6. Paragraph 6 is hereby amended so that it shall hereafter read as follows:

6. Use of Demised Premises and Construction of Improvements: The demised premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair, aircraft storage; aircraft training; aircraft charter; aircraft rentals; and not otherwise without the prior written consent of Landlord.

In connection with such use and occupancy, Tenant intends to construct upon the Demised Premises the improvements depicted in the plans and specifications.

1 - Metal hangar 100' x 110' w/20'x100' office with associated aircraft ramps and vehicle parking. Addison Airport must approve construction prints prior to construction.

As set forth above in Paragraph 3 of this Lease, Tenant further intends to construct the Improvements (as generally described in Exhibit F attached to this First Amendment to the Ground Lease) in accordance with the terms of this Lease (as amended by the First Amendment to Ground Lease). All construction shall be strictly in accordance with plans and specifications submitted by Tenant to Landlord for Landlords’ review and consideration of approval, and such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards, ordinances, rules, and regulations. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection with such construction. Except as provided for in this Lease, Tenant may not construct, locate, install, place or erect any other improvements upon the Leased Premises without the prior written consent of Landlord. It is expressly understood and agreed that Tenant’s construction of any building

or other improvements (including, without limitation, the Improvements) shall include the finish-out of such building and improvements in accordance with the plans and specifications for the finish-out of the building or other improvements as agreed by Landlord and Tenant. Landlord's approval of any plans and specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.

D. Amendment to Paragraph 7. Paragraph 7 is hereby amended so that it shall hereafter read as follows:

7. Acceptance of Demised Premises: Tenant acknowledges that Tenant has fully inspected the demised premises and accepts the demised premises as suitable for the purpose for which the same are leased in their present condition "**AS IS, WHERE IS**" and with all faults and defects, whether known or unknown to either Landlord or Tenant and without representation or warranty of any kind from Landlord as to the status or condition thereof, and further the Ground Lease is subject to any and all currently existing title exceptions or other matters of record or visible or apparent from an inspection affecting the demised premises. Without limiting the foregoing, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, and HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.

E. Amendment to Paragraph 8. Paragraph 8 is hereby amended so that it shall hereafter read as follows:

8. Securing Governmental Approvals and Compliance with Law.

A. Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the demised premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality) applicable or related to, whether directly or indirectly, the use and occupation of the demised premises and whether in existence or hereafter enacted, adopted or imposed, and Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the demised premises, all at Tenant's sole cost and

expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed.

Tenant agrees that any construction or modification of improvements on the demised premises will comply with all standards and rules published by the Landlord or by any person or entity authorized by Landlord to manage and/or operate the Airport ("Airport Manager"), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements. Tenant will properly and timely submit to the Federal Aviation Administration ("FAA"), the Texas Department of Transportation (TXDOT), and any other governmental entity or agency having jurisdiction regarding or related to Addison Airport, a Notice of Proposed Construction, when and as required. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the demised premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the demised premises. Failure of Tenant to observe and comply with the requirements of this Section 8 shall be an Event of Default.

B. Tenant shall comply with noise abatement standards at the Airport at all times and shall notify any aircraft operator using any portion of the demised premises of such standards.

F. Amendments to Paragraph 9. Paragraph 9, subparagraphs A., B. and E. of the Ground Lease are hereby amended so that they shall hereafter read as follows:

"A. Without the prior written consent of Landlord, Tenant shall have no power to and may not assign, sell, pledge, transfer, or otherwise convey (together, "assign" or "assignment") this Lease or any rights or obligations of Tenant hereunder (except to a leasehold mortgagee as hereinbelow provided and in accordance with all of the terms and conditions of this

Lease) or sublet the whole or any part of the demised premises, and any such assignment or any subletting shall be null and void and a cause for immediate termination of this Lease by Landlord. For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of 51% or more of Tenant on the date of the First Amendment to Ground Lease cease to own or have voting control of 51% or more of Tenant at any time during the Term; Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership of voting securities or voting control of Sublessee. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. Any assignment or any subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Paragraph 6 pertaining to the use of the demised premises. In the event of any assignment or any subletting, Tenant shall not assign Tenant's rights hereunder or sublet the demised premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease (and Tenant shall provide a copy of such written agreement to Landlord). No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the demised premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee, transferee, pledgee, or person or entity to whom this Lease is otherwise conveyed or to such subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Tenant shall provide to Landlord the names and addresses of any subtenants and the make, model, aircraft type and "N" number of any aircraft stored or located on or in the demised premises.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the improvements described in Paragraph 6, or (ii) for acquisition of leasehold estate and improvements of (iii) other construction upon the demised premises approved from time to time by Landlord in writing, or (iv) for other purposes which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant

to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee or its successors and assigns performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall and does not have the right and shall and does not have the power to assign, sell, transfer, pledge or otherwise convey this Lease or sublet the whole or any part of the Demised Premises without the prior written approval of the Landlord, and any such assignment, sale, transfer, pledge or other conveyance and any such subletting shall be null and void and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign, pledge, transfer or otherwise convey this Lease, or to sublet the Demised Premises (or any portion thereof), or to use the demised premises, than the Tenant has. Landlord also agrees to reasonably consider the execution and delivery to such proposed leasehold mortgagee of any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the demised premises to the mortgage of such proposed leasehold mortgage.

G. Amendment to Paragraph 10. Paragraph 10 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

10. Property Taxes and Assessments: Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses, levied or assessed on any improvements on the demised premises, the personal property and fixtures on the demised premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant.

H. Amendment to Paragraph 11. Paragraph 11, subparagraph A. of the Ground Lease is hereby amended so that it shall hereafter read as follows:

11. Maintenance and Repair of Demised Premises:

A. Tenant shall, throughout the term hereof, maintain in good repair and in a first class condition (in accordance with, among other things, any construction and/or maintenance standards and specification established by Landlord or Manager and all applicable ordinances, rules, regulations, standards, and permits of the Town of Addison, Texas) all the demised premises and all fixtures, equipment and personal property on the demised premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the demised premises clean and free of trash and in good repair and condition, with all fixtures and equipment situated in the demised premises in good working order, reasonable wear and tear excepted.

I. Amendment to Paragraph 13. Paragraph 13 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

13. Insurance: Tenant shall during the term hereof maintain at Tenant's sole cost and expense insurance relating to the demised premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the demised premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, therefore, proper adjustment in the limits of insurance coverage shall be effected.

(ii) Commercial General Liability insurance against claims for bodily injury, death or property damage or destruction occurring on, in or about the demised premises, with limits of liability of not less than \$2,000,000.00 for each occurrence, CSL/\$4,000,000.00 general aggregate. Coverage must include contractual liability.

(iii) Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time are commonly obtained in the case of property similar to such improvements.

(vi) Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

(vii) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement.

(viii) Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant).

All such policies of insurance shall (i) be issued by insurance companies acceptable to Landlord and authorized to do business in Texas and in the standard form approved by the Texas Department of Insurance, (ii) name the Town of Addison, Texas, and Manager and their respective officials, officers, employees and agents as additional insureds or loss payees, as the case may be, (iii) in all liability policies, provide that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of activities conducted hereunder, (iv) contain a waiver of subrogation endorsement in favor of the Town of Addison, Texas, and (v) provide for at least thirty (30) days written notice to the Town of Addison, Texas prior to cancellation, non-renewal or material modification which affects this Lease. Certificates of insurance (together with the declaration page of such policies, along with the endorsement naming the Town of Addison, Texas and the Manager as an additional insured), satisfactory to Landlord, evidencing all coverage above, shall be promptly delivered to Landlord and updated as may be appropriate, with complete copies of such policies furnished to the Landlord upon request. Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

J. Amendment to Paragraph 18. Paragraph 18 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

18. Airport Minimum Standards and Rules and Regulations:

A. Landlord has adopted Minimum Standards for all operators at the Airport (hereinafter referred to as the “Minimum Standards”) which shall govern Tenant in the use of the demised premises and all common facilities, a copy of which has been furnished to Tenant. The Minimum Standards are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with the Minimum Standards. Landlord shall have the right to amend, modify and alter the Minimum Standards from time to time for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other tenants and customers of the Airport.

B. Landlord has adopted Rules and Regulations (hereinafter referred to as the “Rules and Regulations”) which shall govern Tenant in the use of the demised premises and all common facilities, a copy of which has been furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with the Rules and Regulations. Landlord shall have the right to amend, modify and alter the Rules and Regulations from time to time for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other tenants and customers of the Airport.

K. Amendment to Paragraph 19. Paragraph 19 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

19. Signs and Equipment. After first securing Landlord’s approval, Tenant shall have the right from time to time to install signs depicting Tenant’s name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the demised premises that may be reasonably necessary for the operation of Tenant’s business, provided such signs and equipment are installed and maintained in compliance with all applicable governmental laws, rules, and regulations, including without limitation the Town of Addison’s sign ordinance, and do not interfere with the operation of any navigation facilities or Airport communications (including, without limitation, navigation facilities or Airport communications used or operated by the Federal Aviation Administration).

L. Amendment to Paragraph 21. Paragraph 21 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

21. Indemnity and Exculpation.

A. LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (BOTH IN THEIR OFFICIAL AND PRIVATE CAPACITIES) SHALL NOT BE LIABLE TO TENANT OR TO TENANT'S EMPLOYEES, AGENTS, SERVANTS, CUSTOMERS, INVITEES, SUBTENANTS, LICENSEES, CONCESSIONAIRES, CONTRACTORS, SUBCONTRACTORS, OR TO ANY OTHER PERSON WHOMSOEVER, FOR ANY DEATH OR INJURY TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR ANY OTHER HARM ON OR ABOUT THE DEMISED PREMISES OR ANY ADJACENT AREA OWNED BY LANDLORD CAUSED BY OR RESULTING FROM ANY ACT OR OMISSION OF TENANT, TENANT'S EMPLOYEES, AGENTS, SERVANTS, CUSTOMERS, INVITEES, SUBTENANTS, LICENSEES, CONCESSIONAIRES, CONTRACTORS, SUBCONTRACTORS, OR ANY OTHER PERSON ENTERING THE DEMISED PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT, OR ARISING OUT OF THE USE OR OCCUPATION OF THE DEMISED PREMISES BY TENANT, ITS EMPLOYEES, AGENTS, SERVANTS, CUSTOMERS, INVITEES, SUBTENANTS, LICENSEES, CONCESSIONAIRES, CONTRACTORS, OR SUBCONTRACTORS AND/OR THE CONDUCT OF TENANT'S BUSINESS THEREON, OR ARISING OUT OF ANY BREACH OR DEFAULT BY TENANT IN THE PERFORMANCE OF TENANT'S OBLIGATIONS HEREUNDER; AND TENANT HEREBY AGREES TO AND SHALL DEFEND AND INDEMNIFY LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS AGAINST, AND HOLD LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL LIABILITY, DAMAGES, COSTS, PENALTIES, LOSS, EXPENSE OR CLAIMS ARISING OUT OF SUCH DAMAGE, DESTRUCTION, INJURY, DEATH OR HARM.

B. TENANT AGREES TO AND SHALL DEFEND (WITH COUNSEL ACCEPTABLE TO LANDLORD) AND INDEMNIFY LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (BOTH IN THEIR OFFICIAL AND PRIVATE CAPACITIES) (TOGETHER, FOR PURPOSES OF THIS SUBPARAGRAPH, "INDEMNIFIED PERSONS") AGAINST, AND HOLD THE INDEMNIFIED PERSONS HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LOSSES, HARM, DAMAGES, PENALTIES, LIABILITY,

EXPENSES, LAWSUITS, JUDGMENTS, COSTS, AND FEES (INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS) ("DAMAGES"), ASSERTED BY ANY PERSON OR ENTITY ON ACCOUNT OF OR FOR ANY INJURY TO OR THE DEATH OF ANY PERSON, OR ANY DAMAGE TO OR DESTRUCTION OF ANY PROPERTY, OR ANY OTHER HARM FOR WHICH DAMAGES OR ANY OTHER FORM OF RECOVERY IS SOUGHT (WHETHER AT LAW OR IN EQUITY), RESULTING FROM, BASED UPON, OR ARISING OUT OF, IN WHOLE OR IN PART, ANY CONDITION OF THE DEMISED PREMISES OR ANY ACT OR OMISSION OF TENANT, ITS OFFICERS, EMPLOYEES, AGENTS, ENGINEERS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY OR ACTING UNDER TENANT, UNDER, IN CONNECTION WITH, OR IN THE PERFORMANCE OF, THIS LEASE, INCLUDING ALL DAMAGES CAUSED BY THE INDEMNIFIED PERSON'S OWN NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN, EXCEPTING ONLY THAT TENANT SHALL NOT BE OBLIGATED TO SO DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD AND MANAGER IF SUCH DAMAGES, INJURY OR HARM IS DUE TO THE SOLE NEGLIGENCE OF LANDLORD OR MANAGER.

C. LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (BOTH IN THEIR OFFICIAL AND PRIVATE CAPACITIES) SHALL BE DEFENDED, INDEMNIFIED AND HELD HARMLESS BY AND NOT BE LIABLE TO TENANT FOR ANY DEATH OR INJURY TO ANY PERSON OR PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF ANY KIND RESULTING FROM THE DEMISED PREMISES BECOMING OUT OF REPAIR OR BY DEFECT IN OR FAILURE OF EQUIPMENT, PIPES, OR WIRING, OR BROKEN GLASS, OR BY THE BACKING UP OF DRAINS, OR BY GAS, WATER, STEAM, ELECTRICITY OR OIL LEAKING, ESCAPING OR FLOWING INTO THE DEMISED PREMISES, REGARDLESS OF THE SOURCE, OR BY DAMPNESS OR BY FIRE, EXPLOSION, FALLING PLASTER OR CEILING OR FOR ANY OTHER REASON WHATSOEVER. LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, SHALL NOT BE LIABLE TO TENANT FOR ANY LOSS OR DAMAGE THAT MAY BE OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF OTHER TENANTS OF LANDLORD OR CAUSED BY OPERATIONS IN CONSTRUCTION OF ANY PRIVATE, PUBLIC

OR QUASI-PUBLIC WORK, OR OF ANY OTHER PERSONS WHOMSOEVER, EXCEPTING ONLY THE DULY AUTHORIZED AND RESPECTIVE AGENTS AND EMPLOYEES OF LANDLORD OR MANAGER, AS THE CASE MAY BE.

D. THE PROVISIONS OF THIS SECTION 21 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

M. Addition of Paragraph 21.1. A new Paragraph 21.1 is hereby inserted and made a part of the Ground Lease to read as follows:

Section 21.1. Environmental Compliance.

A. Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant, its agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the demised premises or any portion of the common facilities (described in Paragraph 17), any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act or any other federal, state, county, regional, local or other governmental authority law, rule, regulation, standard, permit, directive or policy, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the demised premises and/or any portions of the common facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under applicable law; or (ii) in any manner prohibited or deemed unsafe under applicable law. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as "Hazardous Materials").

B. TENANT SHALL, AT TENANT'S OWN EXPENSE, COMPLY WITH ANY PRESENTLY EXISTING OR HEREAFTER ENACTED LAWS, RULES, REGULATIONS, STANDARDS, DIRECTIVES, PERMITS, OR NOTICES RELATING TO HAZARDOUS MATERIALS (COLLECTIVELY, "CLEANUP LAWS"). IN FURTHERANCE AND NOT IN LIMITATION OF THE FOREGOING, TENANT SHALL, AT TENANT'S OWN EXPENSE, MAKE ALL SUBMISSIONS TO, PROVIDE ALL INFORMATION

TO, AND COMPLY WITH ALL REQUIREMENTS OF THE APPROPRIATE GOVERNMENTAL AUTHORITY (THE "AUTHORITY") UNDER THE CLEANUP LAWS. SHOULD ANY AUTHORITY REQUIRE THAT A CLEANUP PLAN BE PREPARED AND THAT A CLEANUP BE UNDERTAKEN BECAUSE OF THE EXISTENCE OF HAZARDOUS MATERIALS WHICH WERE INSTALLED, STORED, USED, TREATED, TRANSPORTED, DISPOSED OF OR DISCHARGED ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE COMMON FACILITIES (AS DESCRIBED IN PARAGRAPH 17) BY TENANT, TENANT'S OFFICERS, REPRESENTATIVES, AGENTS, EMPLOYEES, INVITEES, LICENSEES, CUSTOMERS, CONCESSIONAIRES, CONTRACTORS, SUBCONTRACTORS, ANY PERSON ACTING BY OR UNDER THE AUTHORITY OR WITH THE PERMISSION OF TENANT, SUBTENANTS, OR ANY OTHER PERSON ENTERING THE DEMISED PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT DURING THE TERM OF THIS LEASE, TENANT SHALL, AT TENANT'S OWN COST AND EXPENSE, PREPARE AND SUBMIT THE REQUIRED PLANS AND FINANCIAL ASSURANCES AND CARRY OUT THE APPROVED PLANS IN ACCORDANCE WITH SUCH CLEANUP LAWS AND TO LANDLORD'S SATISFACTION. AT NO EXPENSE TO LANDLORD, TENANT SHALL PROMPTLY PROVIDE ALL INFORMATION REQUESTED BY LANDLORD FOR PREPARATION OF AFFIDAVITS OR OTHER DOCUMENTS REQUIRED BY LANDLORD TO DETERMINE THE APPLICABILITY OF THE CLEANUP LAWS TO THE DEMISED PREMISES AND/OR ANY PORTION OF THE COMMON FACILITIES, AS THE CASE MAY BE, AND SHALL SIGN THE AFFIDAVITS PROMPTLY WHEN REQUESTED TO DO SO BY LANDLORD. TENANT SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS LANDLORD AND MANAGER, AND LANDLORD'S AND MANAGER'S OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (BOTH IN THEIR OFFICIAL AND PRIVATE CAPACITIES) FROM AND AGAINST, AND REIMBURSE LANDLORD FOR, ANY AND ALL OBLIGATIONS, DAMAGES, INJUNCTIONS, FINES, PENALTIES, DEMANDS, CLAIMS, COSTS, EXPENSES, ACTIONS, LIABILITIES, SUITS, PROCEEDINGS AND LOSSES OF WHATEVER NATURE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS), AND ALL CLEANUP OR REMOVAL COSTS AND ALL ACTIONS OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN OR ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE COMMON FACILITIES BY

TENANT, TENANT'S OFFICERS, REPRESENTATIVES, AGENTS, EMPLOYEES, INVITEES, LICENSEES, CUSTOMERS, CONCESSIONAIRES, CONTRACTORS, SUBCONTRACTORS, ANY PERSON ACTING BY OR UNDER THE AUTHORITY OR WITH THE PERMISSION OF TENANT, SUBTENANTS, OR ANY OTHER PERSON ENTERING THE DEMISED PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT DURING THE LEASE TERM; AND FROM ALL FINES, SUITS, PROCEDURES, CLAIMS AND ACTIONS OF ANY KIND ARISING OUT OF TENANT'S (OR TENANT'S OFFICERS, REPRESENTATIVES, AGENTS, EMPLOYEES, INVITEES, LICENSEES, CUSTOMERS, CONCESSIONAIRES, CONTRACTORS, SUBCONTRACTORS, ANY PERSON ACTING BY OR UNDER THE AUTHORITY OR WITH THE PERMISSION OF TENANT, SUBTENANTS, OR ANY OTHER PERSON ENTERING THE DEMISED PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT) FAILURE TO PROVIDE ALL INFORMATION, MAKE ALL SUBMISSIONS AND TAKE ALL STEPS REQUIRED BY THE AUTHORITY UNDER THE CLEANUP LAWS OR ANY OTHER LAW (ENVIRONMENTAL OR OTHERWISE). TENANT'S OBLIGATIONS AND LIABILITIES UNDER THIS SUBPARAGRAPH SHALL CONTINUE (AND SURVIVE THE TERMINATION OR EXPIRATION OF THIS LEASE) SO LONG AS THERE MAY BE HAZARDOUS MATERIALS AT THE DEMISED PREMISES AND/OR ANY PORTION OF THE COMMON FACILITIES, THAT WERE INSTALLED, STORED, USED, TREATED, TRANSPORTED, DISPOSED OF OR DISCHARGED DURING THE LEASE TERM BY TENANT, OR TENANT'S OFFICERS, REPRESENTATIVES, AGENTS, EMPLOYEES, INVITEES, LICENSEES, CUSTOMERS, CONCESSIONAIRES, CONTRACTORS, SUBCONTRACTORS, ANY PERSON ACTING BY OR UNDER THE AUTHORITY OR WITH THE PERMISSION OF TENANT, SUBTENANTS, OR ANY OTHER PERSON ENTERING THE DEMISED PREMISES UNDER EXPRESS OR IMPLIED INVITATION OF TENANT. IN ADDITION TO AND NOT IN LIMITATION OF LANDLORD'S OTHER RIGHTS AND REMEDIES, TENANT'S FAILURE TO ABIDE BY THE TERMS OF THIS SECTION SHALL BE RESTRAINABLE BY INJUNCTION.

C. Tenant shall promptly supply Landlord with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

D. Tenant's obligations and liability pursuant to the terms of this Paragraph 21.1 shall survive the expiration or earlier termination of this Lease."

N. Amendment to Paragraph 22. Paragraph 22 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

22. Default by Tenant: The following events shall be deemed to be events of default by Tenant under this Lease:

A. Failure of Tenant to pay any installment of rent or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment or sum which Tenant is to make under this Lease, on the date that same is due and such failure shall continue for a period of ten (10) days after the date on which such payment is to be made.

B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or the payment of taxes, utilities or insurance premiums, or other payment Tenants is to make under this Lease, as set forth in subparagraph A. of this Paragraph 22, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant (and if such failure cannot reasonably be cured with the said thirty (30) period, Tenant may, with Landlord's prior written consent (which consent shall not be unreasonably withheld), have such additional reasonable time (as agreed upon by Landlord and Tenant) to cure such default, provided that Tenant pursues such cure with all due diligence).

C. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

D. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.

E. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.

F. Abandonment by Tenant for a period of thirty (30) days of any substantial portion of the demised premises or cessation of use of the demised premises for the purpose leased.

O. Amendment to Paragraph 26. Paragraph 26 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

26. Title to Improvements: Any and all improvements on the demised premises shall become the property of Landlord upon the expiration or termination of this Lease; provided, however: (i) if Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property and trade fixtures owned by Tenant from the demised premises, but Tenant shall be required to repair any damage to the demised premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; and (ii) Landlord may elect to require Tenant to remove all improvements from the demised premises and restore the demised premises to the condition in which the same existed on the date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense. Upon such termination or expiration, Tenant shall deliver the demised premises to Landlord in good condition, reasonable wear and tear excepted, and shall, at Landlord's request, execute a recordable instrument evidencing the termination or expiration of this Lease and stating the termination or expiration date.

P. Amendment to Paragraph 27. Paragraph 27 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

27. Mechanics' and Materialmen's Liens; Landlord's Lien:

A. Tenant agrees to indemnify and hold Landlord harmless of and from all liability arising out of the filing of any mechanics' or materialmen's liens against the demised premises by reason of any act or omission of Tenant or anyone claiming under Tenant, and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Paragraph 37 as additional rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the demised premises.

B. **TENANT HEREBY GRANTS TO LANDLORD A CONTINUING SECURITY INTEREST TO SECURE PAYMENT OF ALL RENT AND OTHER SUMS OF MONEY COMING DUE HEREUNDER FROM TENANT, AND TO SECURE PAYMENT OF ANY DAMAGES OR LOSS WHICH LANDLORD MAY SUFFER BY REASON OF THE BREACH BY TENANT OF ANY COVENANT, AGREEMENT, OR CONDITION CONTAINED HEREIN, UPON ALL GOODS, WARES, EQUIPMENT,**

FIXTURES, FURNITURE, IMPROVEMENTS AND OTHER PERSONAL PROPERTY OF TENANT PRESENTLY OR WHICH MAY HEREAFTER BE SITUATED ON THE LEASED PREMISES, AND ALL PROCEEDS THEREFROM ("COLLATERAL"). TENANT WILL NOT REMOVE, OR ALLOW OTHERS TO REMOVE, ANY OF SUCH COLLATERAL FROM THE LEASED PREMISES WITHOUT LANDLORD'S PRIOR WRITTEN CONSENT; BUT TENANT MAY REMOVE COLLATERAL IN THE ORDINARY COURSE OF BUSINESS BEFORE A DEFAULT. IF A DEFAULT OCCURS, LANDLORD WILL BE ENTITLED TO EXERCISE ANY OR ALL RIGHTS AND REMEDIES UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE PROVIDED IN THIS LEASE OR BY LAW. IN ADDITION TO ANY OTHER REMEDIES PROVIDED IN THIS LEASE OR BY LAW OR EQUITY, IN THE EVENT OF DEFAULT, LANDLORD MAY ENTER THE LEASED PREMISES AND TAKE POSSESSION OF ANY AND ALL GOODS, WARES, EQUIPMENT, FIXTURES, FURNITURE, IMPROVEMENTS AND OTHER PERSONAL PROPERTY OF TENANT SITUATED UPON THE LEASED PREMISES WITHOUT LIABILITY FOR TRESPASS OR CONVERSION. LANDLORD MAY SELL THE SAME AT A PUBLIC OR PRIVATE SALE, WITH OR WITHOUT HAVING SUCH PROPERTY AT THE SALE, AFTER GIVING TENANT REASONABLE NOTICE AS TO THE TIME AND PLACE OF THE SALE. AT SUCH SALE, LANDLORD OR ITS ASSIGNS MAY PURCHASE THE PROPERTY UNLESS SUCH PURCHASE IS OTHERWISE PROHIBITED BY LAW. UNLESS OTHERWISE PROVIDED BY LAW, THE REQUIREMENT OF REASONABLE NOTICE SHALL BE MET IF SUCH NOTICE IS GIVEN TO TENANT AT THE ADDRESS HEREAFTER PRESCRIBED AT LEAST FIFTEEN (15) DAYS PRIOR TO THE TIME OF THE SALE. THE PROCEEDS OF ANY SUCH DISPOSITION, LESS ALL EXPENSES CONNECTED WITH THE TAKING OF POSSESSION AND SALE OF THE PROPERTY, INCLUDING A REASONABLE ATTORNEY'S FEE, SHALL BE APPLIED AS A CREDIT AGAINST THE INDEBTEDNESS SECURED BY THE SECURITY INTEREST GRANTED IN THIS PARAGRAPH. ANY SURPLUS SHALL BE PAID TO TENANT AND TENANT SHALL PAY ANY DEFICIENCIES UPON DEMAND. UPON REQUEST BY LANDLORD, TENANT WILL EXECUTE AND DELIVER TO LANDLORD A FINANCING STATEMENT IN A FORM SUFFICIENT TO PERFECT THE SECURITY INTEREST OF THE LANDLORD IN THE AFOREMENTIONED PROPERTY AND THE PROCEEDS THEREOF UNDER THE PROVISION OF THE UNIFORM COMMERCIAL CODE IN FORCE IN THE STATE OF TEXAS, AND TENANT IRREVOCABLY APPOINTS LANDLORD

AS TENANT'S ATTORNEY-IN-FACT TO SIGN AND DELIVER A FINANCING STATEMENT TO LANDLORD IF TENANT FAILS OR REFUSES TO DO SO. THIS POWER-OF-ATTORNEY IS COUPLED WITH AN INTEREST. ANY STATUTORY LIEN FOR RENT IS NOT WAIVED; THE SECURITY INTEREST HEREIN GRANTED IS IN ADDITION AND SUPPLEMENTARY THERETO."

C. Notwithstanding anything to the contrary, in exercising Landlord's rights under this Paragraph 27, Landlord shall not be entitled to take possession of or withhold Tenant's right to possess Tenant's business records, books, written or printed material, and computers, or to violate the quality control concerning aircraft parts and aircraft records which are located in a clearly marked secured area.

Q. Amendment to Paragraph 28. Paragraph 28 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

28. Title. Tenant accepts the demised premises subject to: (i) the Base Lease; (ii) Minimum Standards; (iii) the Rules and Regulations; (iv) easements and rights-of way and (v) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by any governmental authority having jurisdiction over the demised premises (including, without limitation, the City, the Federal Aviation Administration, and the Texas Department of Transportation), and (vi) any and all grant agreements or assurances regarding the Airport whether now in effect or hereafter agreed to or imposed.

R. Amendment to Paragraph 29. Paragraph 29 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

29. Quiet Enjoyment and Subordination: Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, and performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon, or to any other matter affecting, the demised premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the demised premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien now existing or hereafter placed on the demised premises; provided, however, any such

subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

S. Addition of Paragraph 37.1. A new Paragraph 37.1 is hereby inserted and made a part of the Ground Lease to read as follows:

37.1. Special Events: Landlord may sponsor certain special events, including, but not limited to, air shows, to be conducted on portions of the Airport, which may limit or obstruct access to the demised premises and/or to the Airport ("Special Events"). As a material inducement to Landlord to enter into this Lease, and notwithstanding anything to the contrary contained herein, Tenant, on behalf of Tenant and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, subtenants, licensees invitees, or concessionaires of Tenant and on behalf of any other party claiming any right to use the demised premises by, through or under Tenant, hereby: (i) agrees that Landlord has the right to sponsor any or all Special Events and to allow use of portions of the Airport therefor even if the same limit or obstruct access to the demised premises and/or to the Airport (and such use for Special Events may preclude Tenant's use of all Airport facilities, except that Tenant will continue to have vehicular (excluding any aircraft) access to the demised premises from roadways outside of the Airport); (ii) releases, waives and discharges Landlord and Manager, and their respective officials, officers, employees and agents, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or obstruction of access to the demised premises and/or to the Airport from the conduct of Special Events and/or activities relating or pertaining thereto, including, without limitation, death, injury to person or property or loss of business or revenue (the "Released Claims"); (iii) covenants not to sue the Landlord or Manager or their respective officials, officers, employees and agents (whether in their official or private capacities) for any Released Claims; (iv) agrees that the terms contained in this Section are intended and shall be construed to be as broad and inclusive as possible under the laws of the State of Texas; and (v) agrees that if any portion of this Section is held to be invalid or unenforceable, the remainder

of this Paragraph shall not be affected thereby but shall continue in full force and effect.

T. Amendment to Paragraph 48. Paragraph 48 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

“48. Governing Law and Venue; Survivability of Rights and Remedies. This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas and with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Agreement, and Landlord and Tenant both irrevocably agree that venue for any disputed concerning this Lease or any of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas. Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the term hereof shall survive the cancellation, expiration or termination of this Lease.

U. Amendment to Paragraph 49. Paragraph 49 of the Ground Lease is hereby amended so that it shall hereafter read as follows:

49. Entire Agreement and Amendments. This Lease, consisting of the above and foregoing through this Paragraph 49 and Exhibits A through ____ attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

Section 2. No Other Amendments. Except to the extent modified or amended herein, all other terms and obligations of the Ground Lease shall remain unchanged and in full force and effect.

Section 3. Applicable Law; Venue. This Amendment shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this Amendment are performable in Dallas County, Texas. Venue for any action under this Amendment shall be in Dallas County, Texas.

Section 4. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the undersigned parties execute this Agreement this ____
_____ of _____, 2004.

LANDLORD:

TOWN OF ADDISON, TEXAS

TENANT:

C. C. HANGAR L. P.

By: _____
Ron Whitehead, City Manager

By: _____
Typed Name: _____
Title: _____:

ATTEST:

By: _____
Carmen Moran, City Secretary

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

ASSIGNMENT OF GROUND LEASE

This Assignment of Ground Lease (the "Assignment") is entered into and effective as of June 2004, at Addison, Texas, by and between Aquila Lease Company (herein referred to as "Assignor") and C. C. Hangar L. P. (herein referred to as "Assignee").

WHEREAS, a Ground Lease was made and entered on September 28, 1983 between the City of Addison, Texas (the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., as landlord, and Parkway Jet, Inc. as tenant (the "Ground Lease," a true and correct copy of which Ground Lease is attached hereto as Exhibit A), by the terms of which certain real property located at Addison Airport and described in the Ground Lease within the Town of Addison, Texas (the "City") and owned by the City was leased to Parkway Jet, Inc.; and

WHEREAS, the tenant's leasehold interest in the Ground Lease was thereafter conveyed to Franklin First Federal Savings Bank by Substitute Trustee's Deed executed May 7, 1991 and recorded in Volume 91092, Volume 2558, Deed Records, Dallas County, Texas; and

WHEREAS, thereafter by that Assignment of Lease dated May 13, 1993 (a true and correct copy of which is attached hereto as Exhibit B), the Ground Lease was assigned from Franklin First Savings Bank, successor in interest to Parkway Jet, Inc.'s interest in the Ground Lease, as assignor, to Aquila Leasing Company, as assignee; and

WHEREAS, by virtue of such assignments, Assignor is the current Tenant under the Ground Lease; and

WHEREAS, the Ground Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Lease as the "Base Lease" (and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations, of the Landlord under the Ground Lease; and

WHEREAS, the said Base Lease has expired and the City is the Landlord under the Ground Lease; and

WHEREAS, the Ground Lease provides in Section 9 thereof that, without the prior written consent of the Landlord, the Tenant may not assign the Ground Lease or any rights of Tenant under the Ground Lease (except as provided therein), and that any assignment must be expressly subject to all the terms and provisions of the Ground Lease, and that any assignment must include a written agreement from the assignee

whereby the assignee agrees to be bound by the terms and provisions of the Ground Lease; and

WHEREAS, Assignor desires to assign the Ground Lease to Assignee, and Assignee desires to accept the Assignment thereof in accordance with the terms and conditions of this Assignment.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions contained herein, the sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound agree as follows:

AGREEMENT

1. Assignor hereby assigns, bargains, sells, and conveys to Assignee, effective as of the date above, all of Assignor's right, title, duties, responsibilities, and interest in and to the Ground Lease, attached hereto as Exhibit A, TO HAVE AND TO HOLD the same, for the remaining term thereof, and Assignor does hereby bind itself and its successors and assigns to warrant and forever defend the same unto Assignee against every person or persons lawfully claiming any part thereof through Assignor.

2. Prior to the effective date of this Assignment, Assignee agrees to pay an Assignment Fee in the amount of Four Hundred Fifty Dollars and no/100 (\$450.00) to Landlord.

3. Assignee hereby agrees to and shall be bound by and comply with all of the terms, provisions, duties, conditions, and obligations of tenant under the Ground Lease. Assignee acknowledges and agrees that it assumes and is hereby assuming all obligations, liability and responsibility of Assignor (and Assignor's predecessors in interest to the Ground Lease) in connection with and under the Ground Lease, and agrees to perform the tenant's obligations under the Ground lease. For purposes of notice under the Ground Lease, the address of Assignee is 5400 West Plano Parkway, Suite 200, Plano, Texas 75093.

4. Nothing in this Agreement shall be construed or be deemed to modify, alter, amend or change any term or condition of the Ground Lease, except as set forth herein.

5. Assignor acknowledges that in addition to any other remedies provided in the Ground Lease or by law, Landlord may at its own option, collect directly from the Assignee or any other assignee or any subtenant as may be approved by Landlord in writing all rents becoming due under such assignment or sublease and apply such rent against any sums due to Landlord. No such collection by Landlord from any Assignee or any other approved assignee or subtenant shall release Assignor from the payment or performance of Assignor's obligations under the Ground lease.

6. The above and foregoing premises to this Assignment and statements and representations made herein are true and correct, and Assignor and Assignee both warrant

and represent that such premises, statements, and representations are true and correct, and that in giving its consent, Landlord is entitled to rely upon such premises, representations and statements.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment on the day and the year first set forth above.

ASSIGNOR:

AQUILA LEASING COMPANY

By: _____

_____, **President**

ASSIGNEE:

C. C. HANGAR, L.P.

By: Vigor Properties, Inc. its General Partner

By: _____

Howard D. Kollinger, President

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he, she) executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this ____ day of _____, 2004.

[SEAL]

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he, she) executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this ____ day of _____, 2004.

[SEAL]

Notary Public, State of Texas

CONSENT OF LANDLORD

The Town of Addison, Texas (“Landlord”) is the Landlord under the Ground Lease described in the above and foregoing Assignment. In executing this Consent of Landlord, Landlord is relying upon the premises, statements, and representations made in the foregoing Assignment by both Assignor and Assignee, and in reliance upon the same Landlord hereby consents to the foregoing Assignment from Assignor to Assignee, waiving none of its rights under the Ground Lease as to the Assignor or the Assignee.

LANDLORD:

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ASSIGNMENT OF LEASE

THIS AGREEMENT is made this 13th day of May, 1993, at Addison, Texas, between Franklin First Savings Bank, successor in interest to Parkway Jet, Inc., hereinafter called "Assignor", and AQUILA LEASING COMPANY, a Texas corporation hereinafter called "Assignee".

WHEREAS, a lease executed on September 28, 1983, between CITY OF ADDISON and ADDISON AIRPORT OF TEXAS, INC., as the Lessor, and Parkway Jet, Inc. as predecessor of the Assignor as Lessee, by the terms of which certain real property located on the Addison Airport was leased to the Assignor as Lessee upon the terms and conditions provided therein; and

WHEREAS, the Assignor now desires to assign the Lease to Assignee, and the Assignee desires to accept the assignment thereof;

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), receipt of which is hereby acknowledged, and the agreement of the Assignee, hereinafter set forth, the Assignor hereby assigns and transfers to the Assignee, its successors and assigns, all of his right, title and interest in and to the lease hereinbefore described, a copy of which is attached hereto as Exhibit "A", and the Assignee hereby agrees to and does accept the assignment, and in addition expressly assumes and agrees to keep, perform and fulfill all the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by the Assignor as the Lessee thereunder, including the making of all payments due to or payable on behalf of the Lessor under said lease when due and payable.

This agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest, and assigns.

EXECUTED the day and year first above written.

ASSIGNOR:

FRANKLIN FIRST SAVINGS BANK

By: Michael J. Johnson
Michael J. Johnson
Senior Vice President

ASSIGNEE:

AQUILA LEASING COMPANY

By: [Signature]
President, its

CONSENT OF LESSOR

The undersigned is the Lessor in the lease described in the foregoing Assignment and hereby consents to the assignment of the lease to Assignee, waving none of their rights thereunder as to the Lessee or the Assignee.

LESSOR:

ADDISON AIRPORT OF TEXAS, INC.

[Signature]
President

ACKNOWLEDGEMENT

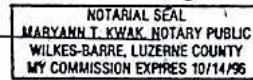
THE STATE OF ~~TEXAS~~ Pennsylvania }
COUNTY OF LUZERNE }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Michael J. Johnson, SAVOR VICE PRESIDENT of FRAXIUS FIGHT SAMP BANK, a CORPORATION, known to me to be person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 11th day of May, 1993.

Maryann T. Kwak
Notary Public - State of Texas

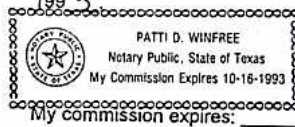
My commission expires: _____



THE STATE OF TEXAS }
COUNTY OF Dallas }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Morris L. Kuhn, President of AgriStar Seeding Company, Texas Corporation, known to me to be person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 12th day of May, 1993.



Patti D. Winfree
Notary Public - State of Texas

My commission expires: _____

THE STATE OF TEXAS }
COUNTY OF Dallas }

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Sam Stuart, President of Addison Airport of Texas, a Texas Corporation, known to me to be person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office this 13th day of May, 1993.

Shauna Henderson
Notary Public - State of Texas

My commission expires: _____



This Ground Lease (hereinafter referred to as the "Lease") is made and entered into as of September 28, 19 83, by and among the City of Addison, Texas, a municipal corporation (hereinafter sometimes referred to as the "City"), Addison Airport Texas, Inc., a Texas Corporation (hereinafter sometimes referred to as "AATI") and PARKWAY JET, INC. (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, AATI leases that certain real property (hereinafter referred to as the "demised premises") described in attached Exhibit from the City pursuant to that certain instrument captioned Agreement for Operation of the Addison Airport (hereinafter referred to as the "Base Lease") between the City and Addison Airport, Inc. (predecessor at AATI); and

WHEREAS, the demised premises are situated at Addison Airport (hereinafter referred to as the "Airport") in Dallas County, Texas, the Airport being delineated in a plat attached hereto as Exhibit B; and

WHEREAS, the City and AATI hereby lease and demise the demised premises to Tenant, and Tenant hereby leases and takes the demised premises from the City and AATI, upon the terms and conditions set forth herein;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. **Base Lease:** All of the terms and conditions of the Base Lease are incorporated into this Lease by reference as if written verbal herein, and Tenant by Tenant's execution hereof acknowledges that AATI has furnished Tenant with a copy of the Base Lease. Tenant agrees to fully comply at all times and in all respects with the terms and conditions of the Base Lease insofar as the same relate to the demised premises and/or the use and operation thereof, except that Tenant shall not be responsible for the payment of any rental due under the Base Lease which shall be paid by AATI.

2. **Definition of Landlord and Effect of Default under the Base Lease:** The term "Landlord" as hereinafter used in this Lease shall mean either AATI or the City. So long as the Base Lease is in effect, AATI shall be entitled to all of the rights, benefits and remedies of a Landlord under this Lease, and shall perform all of the duties, covenants and obligations of the Landlord under this Lease. Upon the expiration or termination of the Base Lease, the City shall be entitled to all of the rights, benefits and remedies of the Landlord under this Lease, and shall perform all of the duties, covenants and obligations of the Landlord under this Lease. The City agrees that (i) until such time as the City notifies Tenant to the contrary in writing, Tenant is fully authorized to make all payments due under this Lease to AATI, and (ii) that default by AATI under the Base Lease shall have no effect on this Lease so long as Tenant pays and performs its duties, covenants and obligations under this Lease.

3. **Term:** The term hereof shall commence on the earlier of September 1, 19 84, or the first day of the first calendar month after Tenant completes the construction hereinafter described and opens for business at the demised premises (the applicable date being hereinafter referred to as the "Commencement Date"), and shall end four hundred eighty (480) months thereafter; provided, however, that any entry upon the demised premises by Tenant prior to the Commencement Date shall be subject to all of the terms and conditions hereof except that rental shall not accrue.

4. **Rental:** Subject to adjustment as hereinafter provided, Tenant agrees to pay to Landlord, without offset or deduction, rent for the demised premises at the rate of EIGHT HUNDRED SIXTY-ONE AND 46/100 per month in advance. The first of such monthly installment shall be due and payable on or before the Commencement Date, and a like installment shall be due and payable on or before the first day of each calendar month thereafter during the term hereof.

5. **Adjustment of Rental:** Commencing on the second anniversary of the Commencement Date and on every bi-annual anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly rental due under paragraph 4 shall be adjusted as follows:

(i) A comparison shall be made between the Consumers' price Index-All Items for the Dallas, Texas Metropolitan Area (hereinafter referred to as the "Price Index") as it existed on the Commencement Date and as it exists on the first day of the calendar month preceding the then applicable Adjustment Date.

(ii) The monthly rental for the two (2) year period beginning with and following the then applicable Adjustment Date shall be either increased or decreased, as the case may be, by the percentage of increase or decrease in the Price Index between the Commencement Date and the then applicable Adjustment Date, but in no event shall such monthly rental ever be decreased below the monthly rental set forth in paragraph 4.

(iii) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible shall be substituted therefor.

6. **Use of Demised Premises and Construction of Improvements.** The demised premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair; aircraft storage; aircraft training; aircraft charter; and aircraft rentals; and not otherwise without the prior written consent of Landlord.

In connection with such use and occupancy, Tenant intends to construct upon the demised premises the improvements depicted in the plans and specifications.

- 1 - Metal hangar 100' x 110' w/20'x100' office with associated aircraft ramps and vehicle parking. Addison Airport must approve construction prints prior to construction.

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All construction shall be strictly in accordance with such plans and specifications, and such construction shall be performed in a first class, workmanlike manner. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection with such construction.

7. **Acceptance of Demised Premises.** Tenant acknowledges that Tenant has fully inspected the demised premises and accepts the demised premises as suitable for the purpose for which the same are leased in their present condition.

8. **Securing Governmental Approvals and Compliance with Law.** Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the demised premises. Tenant shall comply at all times with all governmental laws, ordinances and regulations applicable to the use of the demised premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the demised premises, all at Tenant's sole cost and expense.

9. **Assignment, Subletting and Mortgage of Leasehold Estate:**

A. Without the prior written consent of Landlord, Tenant may not assign this Lease or any rights of Tenant hereunder (except to leasehold mortgagee as hereinafter provided) or sublet the whole or any part of the demised premises. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of paragraph 6 pertaining to the use of the demised premises. In the event of any assignment or subletting, Tenant shall not assign Tenant's rights hereunder or sublet the demised premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the demised premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of obtaining funds for the construction of the improvements described in paragraph 6 or for other construction upon the demised premises approved from time to time by Landlord in writing. In the event that Tenant pursuant to mortgages or deeds of trust mortgage the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee become the owner of the leasehold estate pursuant to foreclosure transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

C. All mortgages or deeds of trust created hereby shall contain provisions requiring the leasehold mortgagee to give Tenant fifteen (15) days written notice of acceleration of the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said mortgages or deeds of trust.

D. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice of such effect has been given to Landlord, to give the holder of such leasehold mortgage at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee, its successors and assigns performs all of the obligations of Tenant hereunder. Landlord also agrees to execute and deliver to such proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the demised premises to the mortgage of such proposed leasehold mortgagee.

10. **Property Taxes and Assessments:** Tenant shall pay any and all property taxes or assessments levied or assessed on improvements on the demised premises, the personal property and fixtures on the demised premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord's "property tax receipts" or other written evidence that all such taxes have been paid by Tenant.

11. Maintenance and Repair of Demised Premises:

A. Tenant shall, throughout the term hereof, maintain in good repair and condition all the demised premises and all fixtures, equipment and personal property on the demised premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the demised premises clean and free of trash and in good repair and condition, with all fixtures and equipment situated in the demised premises in working order, reasonable wear and tear excepted.

B. In the event Tenant shall fail to so maintain the demised premises and the fixtures, equipment and personal property situated thereon, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefor expended by Landlord plus interest thereon as provided in paragraph 37 shall be paid by Tenant on demand.

12. **Alterations, Additions and Improvement.** After completion of the improvements described in paragraph 6, Tenant shall not erect any openings in the roof or exterior walls, or make any alterations, additions or improvements to the demised premises without the prior written consent of Landlord. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures provided that Tenant complies with all applicable governmental laws, ordinances and regulations.

All alterations, additions and improvements in and to the demised premises shall be performed in a first class, workmanlike manner and Tenant shall promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection therewith.

13. **Insurance.** Tenant shall during the term hereof maintain at Tenant's sole cost and expense insurance relating to the demised premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than eight percent (80%) of the full insurable value of the demised premises. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, therefore, proper adjustment in the limits of insurance coverage shall be effected.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the demised premises, such insurance to afford protection to Landlord of not less than \$500,000.00 with respect to any one person and \$1,000,000.00 with respect to any one accident and not less than \$200,000.00 with respect to property damage.

(iii) Workmen's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the demised premises with respect to which claims for death or bodily injury could be asserted against Landlord or the demised premises, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency of the State of Texas.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, the minimum amount of \$100,000.00 for damage to property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time is commonly obtained in the case of property similar to such improvements.

(vi) Hangar keeper's liability insurance providing for coverage in the following limits: \$200,000.00 per aircraft and \$400,000.00 per occurrence on property damage to aircraft in the care, custody or control of Tenant.

(vii) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement.

All such policies of insurance (i) shall be issued by insurance companies acceptable to Landlord, (ii) shall name Landlord as additional insured or loss payee, as the case may be, and (iii) shall provide for at least ten (10) days written notice to Landlord prior to cancellation or modification. Tenant shall provide Landlord with duplicate originals of all insurance policies required by this paragraph.

14. Casualty Damage or Destruction:

A. In case of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

B. In case of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly commence and complete the restoration, repair and replacement of such buildings, structures and equipment as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration").

C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the demised premises shall be held by Landlord. Landlord shall be protected in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to a matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon, and Landlord shall be under no duty to take any action other than as set forth in this paragraph 14.

D. Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof including, without limitation, adjuster's and attorney's fees and expenses) shall be applied as follows:

(i) Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by a certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material involved and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.

(ii) Upon receipt by Landlord of evidence of the character required by the foregoing clauses (i)(a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialmen's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

E. In the event that Tenant does not timely commence Restoration, or after completion of Restoration, if Tenant does not diligently proceed with the completion of same, Landlord shall have the right to commence or complete Restoration. If Landlord has given Tenant thirty days prior written notice requesting the commencement of Restoration or that Tenant diligently proceeds to the completion of same, Tenant during such thirty (30) day period does not so commence or proceed to diligently complete Restoration. In such event, Landlord shall retain the insurance proceeds, and Tenant shall pay any deficiency if such proceeds are not sufficient for Restoration.

15. Condemnation:

A. If during the term hereof, any part of the demised premises shall be acquired or condemned by eminent domain for any public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to a condemning authority the remainder of the demised premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the demised premises and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.

B. If after such taking by or sale to said condemning authority the remainder of the demised premises is susceptible to efficient economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment hereunder, as adjusted from time to time pursuant to paragraph 5, by a fraction, the numerator of which shall be the number of square feet remaining in the demised premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the demised premises. The rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the demised premises.

C. If this Lease is not terminated pursuant to Section A, Tenant shall promptly restore the improvements on the demised premises and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the demised premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant in their interest may appear. If this Lease is terminated pursuant to Section A, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

16. **Utilities.** Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the demised premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the demised premises during the term hereof. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

17. **Common Facilities.** Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the demised premises, other airport installations, and all other reasonable services which may be provided with charge from time to time by Landlord in operating the Airport. All such common facilities shall at all times be under the exclusive control and management of Landlord and may be rearranged, modified, changed or terminated from time to time at Landlord's sole discretion.

18. **Rules and Regulations.** Landlord has adopted Rules and Regulations (hereinafter referred to as the "Rules and Regulations") which shall govern Tenant in the use of the demised premises and all common facilities, a copy of which has been furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with the Rules and Regulations. Landlord shall have the right to amend, notify and alter the Rules and Regulations from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other tenants and customers of the Airport.

19. **Signs and Equipment.** After first securing Landlord's approval which will not be unreasonably withheld, Tenant shall have the right from time to time to install and operate advertising signs and radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the demised premises that may be reasonably necessary for the operation of Tenant's business.

20. **Landlord's Right of Entry.** Landlord and Landlord's authorized representatives shall have the right, during the normal business hours, to enter the demised premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the demised premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose.

During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the demised premises customary signs advertising the demised premises for lease or for sale.

21. Indemnity and Exculpation:

A. Landlord shall not be liable to Tenant or to Tenant's employees, agents, servants, customers, invitees, or to any other persons, for any injury to persons or damage to property on or about the demised premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, servants, customers, invitees, subtenants, licensees, concessionaires or any other person entering the demised premises under express or implied invitation of Tenant, or arising out of the use of the demised premises by Tenant and the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in performance of Tenant's obligations hereunder; and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from all loss, expense or claims arising out of such damage or injury.

B. Landlord and Landlord's agents and employees shall not be liable to Tenant for any injury to persons or damage to property resulting from the demised premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the demised premises, regardless of the source, or dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever. Landlord shall not be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work, or of any other persons whomsoever, excepting only the authorized agents and employees of Landlord.

22. Default by Tenant. The following events shall be deemed to be events of default by Tenant under this Lease:

A. Failure of Tenant to pay any installment of rent or any other sum payable to Landlord hereunder on the date that same is due and such failure shall continue for a period of ten (10) days.

B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant.

C. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

D. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent proceedings filed against Tenant or such guarantor.

E. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations or abandonment by Tenant of any substantial portion of the demised premises or cessation of use of the demised premises for the purpose leased.

23. **Remedies of Landlord.** Upon the occurrence of any of the events of default listed in paragraph 22, Landlord shall have the option to pursue any one or more of the following remedies without the notice or demand whatsoever:

A. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damages which Landlord may suffer by reason of such termination, whether through inability to relet the demised premises on satisfactory terms or otherwise.

B. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on the date of such termination damages in any amount equal to the excess, if any, of the total amount of all monthly rental and other amounts to be paid by Tenant to Landlord hereunder for the period which would otherwise have constituted the unexpired portion of the term of this Lease over the then fair market rental value of the demised premises for such unexpired portion of the term of this Lease.

C. Enter upon and take possession of the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof. Landlord may relet the demised premises and receive the rent therefor. Tenant agrees to pay to Landlord monthly or

deducted from time to time any deficiency that may arise from the amount of such deficiency in determining the amount of such deficiency. Brokerage commissions, attorneys' fees and other costs of relief shall be subtracted from the amount of relief received under such reletting.

D. Enter upon the demised premises without terminating this Lease and without being liable for prosecution or for any claim damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the rate of ten percent (10%) per annum from the date expended until paid. Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by negligence of Landlord or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedy provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

24. **Default by Landlord.** No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the demised premises or render Landlord liable for damages or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recoupment or entitle Tenant to take any action whatsoever with regard to the demised premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default, the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right to:

(i) Proceed to cure such default and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder; or

(ii) Proceed to cure such default and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum.

If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give such notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

25. **Waiver of Subrogation.** Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon or constituting a part of, the demised premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

26. **Title to Improvements.** Any and all improvements on the demised premises shall become the property of Landlord upon expiration or termination of this Lease; provided, however: (i) If Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property and trade fixtures owned by Tenant from the demised premises, but Tenant shall be required to repair damage to the demised premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; (ii) Landlord may elect to require Tenant to remove all improvements from the demised premises and restore the demised premises to the condition in which the same existed on the date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense.

27. **Mechanics' and Materialmen's Liens.** Tenant agrees to indemnify and hold Landlord harmless of and from all liability arising from the filing of any mechanics' or materialmen's liens against the demised premises by reason of any act or omission of Tenant or any claimant under Tenant, and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in paragraph 37 as additional rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the demised premises.

28. **Title.** Tenant accepts the demised premises subject to: (i) the Base Lease; (ii) the Rules and Regulations; (iii) easements, rights-of-way and (iv) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by governmental authority having jurisdiction over the demised premises.

29. **Quiet Enjoyment and Subordination.** Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, performance of the terms, conditions, covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to recorded mortgage, deed of trust or other lien presently existing upon the demised premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the demised premises or to declare this Lease prior and superior to any mortgage, deed of trust or other now existing or hereafter placed on the demised premises; provided, however, any such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

30. **Tenant on Net Return Basis.** Except for the rental due under the Base Lease during the time that AATI is the Landlord hereunder, it is intended that the rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any taxes, expenses or charges with respect to the demised premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

31. **Holding Over.** Should Tenant, or any of Tenant's successors in interest fail to surrender the demised premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental equal to two hundred percent (200%) of the rent paid for the last month of the term of this Lease.

32. **Waiver of Default.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

33. **Release of Landlord Upon Transfer.** All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the demised premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee and Landlord's interest in this Lease and the demised premises.

34. **Attorneys' Fees.** If, on account of any breach or default by Landlord or Tenant of their respective obligations under this Lease, it shall become necessary for the other to employ an attorney to enforce or defend any of such party's rights or remedies hereunder, should such party prevail, such party shall be entitled to collect reasonable attorneys' fees incurred in such connection from the other party.

35. **Financial Information.** Tenant agrees that Tenant will from time to time upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

36. **Estoppel Certificates.** Tenant agrees that from time to time, upon not less than ten (10) days' prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

D. If requested by Landlord, Tenant will not pay rent for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to

furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with the exhibit attached thereto.

37. Interest on Tenant's Obligations and Manner of Payment. All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of ten percent (10%) per annum from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.

38. Independent Contractor. It is understood and agreed that in leasing and operating the demised premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord.

39. Force Majeure. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

40. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

41. Use of Language. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

42. Captions. The captions or headings or paragraphs in this Lease are inserted for convenience only, and shall not be considered as controlling the provisions hereof if any question of intent should arise.

43. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notice required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

44. Severability. If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

45. Notices. Any notice or document required or permitted to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

LANDLORD:

Addison Airport of Texas, Inc.
P. O. Box 34067
Dallas, Texas 75234

City of Addison, Texas

P. O. Box 144

Addison, Texas 75001

TENANT:

PARKHAY JET, INC.
5485-Beltline Rd., Suite 300
Dallas, Texas 75240
392-3722

46. Fees or Commissions. Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such party agrees to indemnify and hold the other party harmless from the payment of any such fees or commissions.

47. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

48. Governing Law and Venue. This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, and Landlord and Tenant both irrevocably agree that venue for any dispute concerning this Lease or any of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas.

49. Entire Agreement and Amendments. This Lease, consisting of forty-nine (49) paragraphs and Exhibits A through B attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

EXECUTED as of the day month and year first above written.

LANDLORD:

ADDISON AIRPORT OF TEXAS, INC.

By: *[Signature]*

Its: *Vice President*

CITY OF ADDISON, TEXAS

By: *[Signature]*

Its: *Mayor Pro-Tem*

TENANT:

By: *[Signature]*, Pres.

Its: *[Signature]*

R

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Robert L. Gore
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15th day of November, 19 82

Dorothy L. James
Notary Public
Dallas
County, Texas

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Benny Axelstein
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purpose and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2nd day of Dec., 19 82

Jacqueline Sharp
Notary Public
Dallas
County, Texas



STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Ray B. Blanchard & Todd C. Co.
known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 1 day of November, 19 83

Dorothy L. James
Notary Public
Dallas
County, Texas

This Ground Lease (hereinafter referred to as the "Lease") is made and entered into as of September 28, 19 83, by and among the City of Addison, Texas, a municipal corporation (hereinafter sometimes referred to as the "City"), Addison Airport of Texas, Inc., a Texas Corporation (hereinafter sometimes referred to as "AATI") and PARKWAY JET, INC. (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, AATI leases that certain real property (hereinafter referred to as the "demised premises") described in attached Exhibit from the City pursuant to that certain Instrument captioned Agreement for Operation of the Addison Airport (hereinafter referred to as the "Base Lease") between the City and Addison Airport, Inc. (predecessor of AATI); and

WHEREAS, the demised premises are situated at Addison Airport (hereinafter referred to as the "Airport") in Dallas County, Texas, the Airport being delineated in a plat attached hereto as Exhibit B; and

WHEREAS, the City and AATI hereby lease and demise the demised premises to Tenant, and Tenant hereby leases and takes the demised premises from the City and AATI, upon the terms and conditions set forth herein;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. **Base Lease:** All of the terms and conditions of the Base Lease are incorporated into this Lease by reference as if written verbatim herein, and Tenant by Tenant's execution hereof acknowledges that AATI has furnished Tenant with a copy of the Base Lease. Tenant agrees to fully comply at all times and in all respects with the terms and conditions of the Base Lease insofar as the same relate to the demised premises and/or the use and operation thereof, except that Tenant shall not be responsible for the payment of any rental due under the Base Lease which shall be paid by AATI.

2. **Definition of Landlord and Effect of Default under the Base Lease:** The term "Landlord" as hereinafter used in this Lease shall mean either AATI or the City. So long as the Base Lease is in effect, AATI shall be entitled to all of the rights, benefits and remedies of the Landlord under this Lease, and shall perform all of the duties, covenants and obligations of the Landlord under this Lease. Upon the expiration or termination of the Base Lease, the City shall be entitled to all of the rights, benefits and remedies of the Landlord under this Lease, and shall perform all of the duties, covenants and obligations of the Landlord under this Lease. The City agrees that (i) until such time as the City notifies Tenant to the contrary in writing, Tenant is fully authorized to make all payments due under this Lease to AATI; and (ii) that default by AATI under the Base Lease shall have no effect on this Lease so long as Tenant pays and performs its duties, covenants and obligations under this Lease.

3. **Term:** The term hereof shall commence on the earlier of September 1, 19 84, or the first day of the first calendar month after Tenant completes the construction hereinafter described and opens for business at the demised premises (the applicable date being hereinafter referred to as the "Commencement Date"), and shall end four hundred eighty (480) months thereafter; provided, however, that any entry upon the demised premises by Tenant prior to the Commencement Date shall be subject to all of the terms and conditions hereof except that rental shall not accrue.

4. **Rental:** Subject to adjustment as hereinbelow provided, Tenant agrees to pay to Landlord, without offset or deduction, rent for the demised premises at the rate of EIGHT HUNDRED SIXTY-ONE AND 46/100 per month in advance. The first of such monthly installment shall be due and payable on or before the Commencement Date, and a like installment shall be due and payable on or before the first day of each calendar month thereafter during the term hereof.

5. **Adjustment of Rental:** Commencing on the second anniversary of the Commencement Date and on every bi-annual anniversary thereafter (hereinafter referred to as the "Adjustment Date"), the monthly rental due under paragraph 4 shall be adjusted as follows:

(i) A comparison shall be made between the Consumers' price Index-All Items for the Dallas, Texas Metropolitan Area (hereinafter referred to as the "Price Index") as it existed on the Commencement Date and as it exists on the first day of the calendar month preceding the then applicable Adjustment Date.

(ii) The monthly rental for the two (2) year period beginning with and following the then applicable Adjustment Date shall be either increased or decreased, as the case may be, by the percentage of increase or decrease in the Price Index between the Commencement Date and the then applicable Adjustment Date, but in no event shall such monthly rental ever be decreased below the monthly rental set forth in paragraph 4.

(iii) In the event that the Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Price Index as closely as feasible shall be substituted therefor.

6. **Use of Demised Premises and Construction of Improvements.** The demised premises shall be used and occupied by Tenant only for the following purposes: sale of aircraft and aircraft parts; aircraft maintenance and repair; aircraft storage; aircraft training; aircraft charter; and aircraft rentals; and not otherwise without the prior written consent of Landlord.

In connection with such use and occupancy, Tenant intends to construct upon the demised premises the improvements depicted in the plans and specifications.

- 1 - Metal hangar 100' x 110' w/20'x100' office with associated aircraft ramps and vehicle parking. Addison Airport must approve construction prints prior to construction. #67

All construction shall be strictly in accordance with such plans and specifications, and such construction shall be performed in a first class, workmanlike manner. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection with such construction.

7. **Acceptance of Demised Premises.** Tenant acknowledges that Tenant has fully inspected the demised premises and accepts the demised premises as suitable for the purpose for which the same are leased in their present condition.

8. **Securing Governmental Approvals and Compliance with Law.** Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the demised premises. Tenant shall comply at all times with all governmental laws, ordinances and regulations applicable to the use of the demised premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the demised premises, all at Tenant's sole cost and expense.

9. **Assignment, Subletting and Mortgaging of Leasehold Estate:**

A. Without the prior written consent of Landlord, Tenant may not assign this Lease or any rights of Tenant hereunder (except to leasehold mortgagee as hereinbelow provided) or sublet the whole or any part of the demised premises. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of paragraph 6 pertaining to the use of the demised premises. In the event of any assignment or subletting, Tenant shall not assign Tenant's rights hereunder or sublet the demised premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the demised premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder.

B. Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of obtaining funds for the construction of the improvements described in paragraph 6 or for other construction upon the demised premises approved from time to time by Landlord in writing. In the event that Tenant pursuant to mortgages or deeds of trust mortgage the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee become the owner of the leasehold estate pursuant to foreclosure transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rental due hereunder and otherwise fully perform the terms and conditions of this Lease.

C. All mortgages or deeds of trust created hereby shall contain provisions (i) requiring the leasehold mortgagee to give the holder of such leasehold mortgagee at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

D. Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice of such effect has been given to Landlord, to give the holder of such leasehold mortgagee at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

E. Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a "Non-Disturbance Agreement" wherein Landlord agrees that Landlord will (i) recognize such mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord's obligations hereunder so long as such mortgagee, its successors and assigns performs all of the obligations of Tenant hereunder. Landlord also agrees to execute and deliver to any proposed leasehold mortgagee any other documents which such proposed leasehold mortgagee may reasonably request concerning mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord's interest in the demised premises to the mortgage of such proposed leasehold mortgagee.

10. **Property Taxes and Assessments:** Tenant shall pay any and all property taxes or assessments levied or assessed on improvements on the demised premises, the personal property and fixtures on the demised premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord's "receipts" or other written evidence that all such taxes have been paid by Tenant.

11. **Maintenance and Repair of Demised Premises:**

A. Tenant shall, throughout the term hereof, maintain in good repair and condition all the demised premises and all fixtures, equipment and personal property on the demised premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the demised premises clean and free of trash and in good repair and condition, with all fixtures and equipment situated in the demised premises in working order, reasonable wear and tear excepted.

B. In the event Tenant shall fail to so maintain the demised premises and the fixtures, equipment and personal property situated thereon, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefor expended by Landlord plus interest thereon as provided in paragraph 37 shall be paid by Tenant on demand.

12. **Alterations, Additions and Improvement:** After completion of the improvements described in paragraph 6, Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the demised premises without the prior written consent of Landlord. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures provided that Tenant complies with all applicable governmental laws, ordinances and regulations.

All alterations, additions and improvements in and to the demised premises shall be performed in a first class, workmanlike manner and Tenant shall promptly pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection therewith.

13. **Insurance:** Tenant shall during the term hereof maintain at Tenant's sole cost and expense insurance relating to the demised premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than eight percent (80%) of the full insurable value of the demised premises. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, therefore, proper adjustment in the limits of insurance coverage shall be effected.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the demised premises, such insurance to afford protection to Landlord of not less than \$500,000.00 with respect to any one person and \$1,000,000.00 with respect to any one accident and not less than \$200,000.00 with respect to property damage.

(iii) Workmen's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the demised premises with respect to which claims for death or bodily injury could be asserted against Landlord or the demised premises, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency of the State of Texas.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, the minimum amount of \$100,000.00 for damage to property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time a commonly obtained in the case of property similar to such improvements.

(vi) Hangar keeper's liability insurance providing for coverage in the following limits: \$200,000.00 per aircraft and \$400,000.00 per occurrence on property damage to aircraft in the care, custody or control of Tenant.

(vii) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement.

All such policies of insurance (i) shall be issued by insurance companies acceptable to Landlord, (ii) shall name Landlord as additional insured or loss payee, as the case may be, and (iii) shall provide for at least ten (10) days written notice to Landlord prior to cancellation or modification. Tenant shall provide Landlord with duplicate originals of all insurance policies required by this paragraph.

14. **Casualty Damage or Destruction:**

A. In case of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

B. In case of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly commence and complete the restoration, repair and replacement of said buildings, structures and equipment as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration").

C. All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the demised premises shall be held by Landlord. Landlord shall be protected in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon, and Landlord shall be under no duty to take any action other than as set forth in this paragraph 14.

D. Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the demised premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof including, without limitation, adjuster's and attorney's fees and expenses) shall be applied as follows:

(i) Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material required, and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete payment thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.

(ii) Upon receipt by Landlord of evidence of the character required by the foregoing clauses (i)(a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialmen's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

E. In the event that Tenant does not promptly commence Restoration, or after completion of same, Tenant does not diligently proceed with the completion of same, Landlord shall have the right to commence or complete Restoration, after Landlord has given Tenant thirty (30) days prior written notice requesting the commencement of Restoration or that Tenant diligently proceeds to the completion of same. If Tenant during such thirty (30) day period does not so commence or proceed to diligently complete Restoration, in such event, Landlord shall retain the insurance proceeds, and Tenant shall pay any deficiency if such proceeds are not sufficient for Restoration.

15. Condemnation:

A. If during the term hereof, any part of the demised premises shall be acquired or condemned by eminent domain for any public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to a condemning authority the remainder of the demised premises is not susceptible to efficient and economic occupation and operation, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the demised premises and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.

B. If after such taking by or sale to said condemning authority the remainder of the demised premises is susceptible to efficient economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment hereunder, as adjusted from time to time pursuant to paragraph 5, by a fraction, the numerator of which shall be the number of square feet remaining in the demised premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the demised premises. The rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the demised premises.

C. If this Lease is not terminated pursuant to Section A, Tenant shall promptly restore the improvements on the demised premises and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the demised premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant in their interest may appear. If this Lease is terminated pursuant to Section A, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

16. **Utilities.** Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the demised premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, services furnished to the demised premises during the term hereof. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

17. **Common Facilities.** Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the demised premises, other airport installations, and all other reasonable services which may be provided without charge from time to time by Landlord in operating the Airport. All such common facilities shall at all times be under the exclusive control and management of Landlord and may be rearranged, modified, changed or terminated from time to time at Landlord's sole discretion.

18. **Rules and Regulations.** Landlord has adopted Rules and Regulations (hereinafter referred to as the "Rules and Regulations") which shall govern Tenant in the use of the demised premises and all common facilities, a copy of which has been furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with the Rules and Regulations. Landlord shall have the right to amend, notify and alter the Rules and Regulations from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other Tenants and customers of the Airport.

19. **Signs and Equipment.** After first securing Landlord's approval which will not be unreasonably withheld, Tenant shall have the right from time to time to install and operate advertising signs and radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the demised premises that may be reasonably necessary for the operation of Tenant's business.

20. **Landlord's Right of Entry.** Landlord and Landlord's authorized representatives shall have the right, during the normal business hours, to enter the demised premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the demised premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose.

During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the demised premises customary signs advertising the demised premises for lease or for sale.

21. Indemnity and Exculpation:

A. Landlord shall not be liable to Tenant or to Tenant's employees, agents, servants, customers, invitees, or to any other persons whomsoever, for any injury to persons or damage to property on or about the demised premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, servants, customers, invitees, subtenants, licensees, concessionaires or any other person entering the demised premises under express or implied invitation of Tenant, or arising out of the use of the demised premises by Tenant and the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder; and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from all loss, expense or claims arising out of such damage or injury.

B. Landlord and Landlord's agents and employees shall not be liable to Tenant for any injury to persons or damage to property resulting from the demised premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the demised premises, regardless of the source, or dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever. Landlord shall not be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work, or of any other persons whomsoever, excepting only damages caused by the authorized agents and employees of Landlord.

22. Default by Tenant. The following events shall be deemed to be events of default by Tenant under this Lease:

A. Failure of Tenant to pay any installment of rent or any other sum payable to Landlord hereunder on the date that same is due and such failure shall continue for a period of ten (10) days.

B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant.

C. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

D. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent proceedings filed against Tenant or such guarantor.

E. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.

F. Abandonment by Tenant of any substantial portion of the demised premises or cessation of use of the demised premises for the purpose leased.

23. **Remedies of Landlord.** Upon the occurrence of any of the events of default listed in paragraph 22, Landlord shall have the option to pursue any one or more of the following remedies without the notice or demand whatsoever:

A. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to so surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damages which Landlord may suffer by reason of such termination, whether through inability to relet the demised premises on satisfactory terms or otherwise.

B. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to so surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on the date of such termination damages in any amount equal to the excess, if any, of the total amount of all monthly rental and other amounts to be paid by Tenant to Landlord hereunder for the period which would otherwise have constituted the unexpired portion of the term of this Lease over the then fair market rental value of the demised premises for such unexpired portion of the term of this Lease.

C. Enter upon and take possession of the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof. Landlord may relet the demised premises and receive the rent therefor. Tenant agrees to pay to Landlord monthly or

demand from time to time upon the written request of Landlord during the term of this Lease. Tenant agrees to pay Landlord on demand the amount of any loss, damages, expenses, attorneys' fees, brokerage commissions, and other costs of relief. If the amount of any such loss, damages, expenses, attorneys' fees, brokerage commissions, and other costs of relief is to be subtracted from the amount of any rent due to Landlord, the amount of such loss, damages, expenses, attorneys' fees, brokerage commissions, and other costs of relief shall be subtracted from the amount of any rent due to Landlord.

D. Enter upon the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand the amount of any loss, damages, expenses, attorneys' fees, brokerage commissions, and other costs of relief. If the amount of any such loss, damages, expenses, attorneys' fees, brokerage commissions, and other costs of relief is to be subtracted from the amount of any rent due to Landlord, the amount of such loss, damages, expenses, attorneys' fees, brokerage commissions, and other costs of relief shall be subtracted from the amount of any rent due to Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedy provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any right due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

24. **Default by Landlord.** No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the demised premises or render Landlord liable for damages or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recoupment or entitle Tenant to take any action whatsoever with regard to the demised premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default, the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right to:

(i) Proceed to cure such default and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder; or

(ii) Proceed to cure such default and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum.

If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

25. **Waiver of Subrogation.** Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon or constituting a part of, the demised premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

26. **Title to Improvements.** Any and all improvements on the demised premises shall become the property of Landlord upon the expiration or termination of this Lease; provided, however: (i) if Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property and trade fixtures owned by Tenant from the demised premises, but Tenant shall be required to repair any damage to the demised premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense; and (ii) Landlord may elect to require Tenant to remove all improvements from the demised premises and restore the demised premises to the condition in which the same existed on the date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense.

27. **Mechanics' and Materialmen's Liens.** Tenant agrees to indemnify and hold Landlord harmless of and from all liability arising out of the filing of any mechanics' or materialmen's liens against the demised premises by reason of any act or omission of Tenant or anyone claiming under Tenant, and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in paragraph 37 as additional rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the demised premises.

28. **Title.** Tenant accepts the demised premises subject to: (i) the Base Lease; (ii) the Rules and Regulations; (iii) easements, rights-of-way and (iv) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by a governmental authority having jurisdiction over the demised premises.

29. **Quiet Enjoyment and Subordination.** Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, a performance of the terms, conditions, covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the demised premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the demised premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien now existing or hereafter placed on the demised premises; provided, however, any such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

30. **Tenant on Net Return Basis.** Except for the rental due under the Base Lease during the time that AATI is the Landlord hereunder, it is intended that the rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any loss, expenses or charges with respect to the demised premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

31. **Holding Over.** Should Tenant, or any of Tenant's successors in interest fail to surrender the demised premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental equal to two hundred percent (200%) of the rent paid for the last month of the term of this Lease.

32. **Waiver of Default.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

33. **Release of Landlord Upon Transfer.** All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the demised premises by Landlord provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee. Landlord's interest in this Lease and the demised premises.

34. **Attorneys' Fees.** If, on account of any breach or default by Landlord or Tenant of their respective obligations under this Lease, it shall become necessary for the other to employ an attorney to enforce or defend any of such party's rights or remedies hereunder, it should such party prevail, such party shall be entitled to collect reasonable attorneys' fees incurred in such connection from the other party.

35. **Financial Information.** Tenant agrees that Tenant will from time to time upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

36. **Estoppel Certificates.** Tenant agrees that from time to time, upon not less than ten (10) days' prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

D. If requested by Landlord, Tenant will not pay rent for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to

furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's failure to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver Tenant a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with exhibit attached thereto.

37. Interest on Tenant's Obligations and Manner of Payment. All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of ten percent (10%) per annum from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.

38. Independent Contractor. It is understood and agreed that in leasing and operating the demised premises, Tenant is acting as independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord.

39. Force Majeure. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

40. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

41. Use of Language. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

42. Captions. The captions or headings or paragraphs in this Lease are inserted for convenience only, and shall not be considered as constituting the provisions hereof if any question of intent should arise.

43. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notice required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

44. Severability. If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

45. Notices. Any notice or document required or permitted to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

LANDLORD:

Addison Airport of Texas, Inc.
P. O. Box 34067
Dallas, Texas 75234

City of Addison, Texas

P. O. Box 144

Addison, Texas 75001

TENANT:

PARKWAY JET, INC.
5485 Beltline Rd., Suite 300
Dallas, Texas 75240
392-3722

46. Fees or Commissions. Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such party agrees to indemnify and hold the other party harmless from the payment of any such fees or commissions.

47. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

48. Governing Law and Venue. This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, and Landlord and Tenant both irrevocably agree that venue for any dispute concerning this Lease or any of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas.

49. Entire Agreement and Amendments. This Lease, consisting of forty-nine (49) paragraphs and Exhibits A through B attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

EXECUTED as of the day month and year first above written.

LANDLORD:

ADDISON AIRPORT OF TEXAS, INC.

By: [Signature]

Its: Vice President

CITY OF ADDISON, TEXAS

By: [Signature]

Its: Mayor Pro Tem

TENANT:

By: [Signature]

Its: [Signature]

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Robert L. Gore
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15th day of November, 19 83

Dorothy L. James
Notary Public
Dallas
County, Texas

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Benny Arkelstein
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same
for the purpose and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2nd day of Dec., 19 83

Jacque Sharp
Notary Public
Dallas
County, Texas



STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Roy B. Blanchard & Todd C. Cripps
known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same
for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 1 day of November, 19 83

Dorothy L. James
Notary Public
Dallas
County, Texas

HEING a tract of land situated in the William Jones Survey, Abstract No. 197, Dallas County, Texas, also being located on Addison Municipal Airport, Addison.

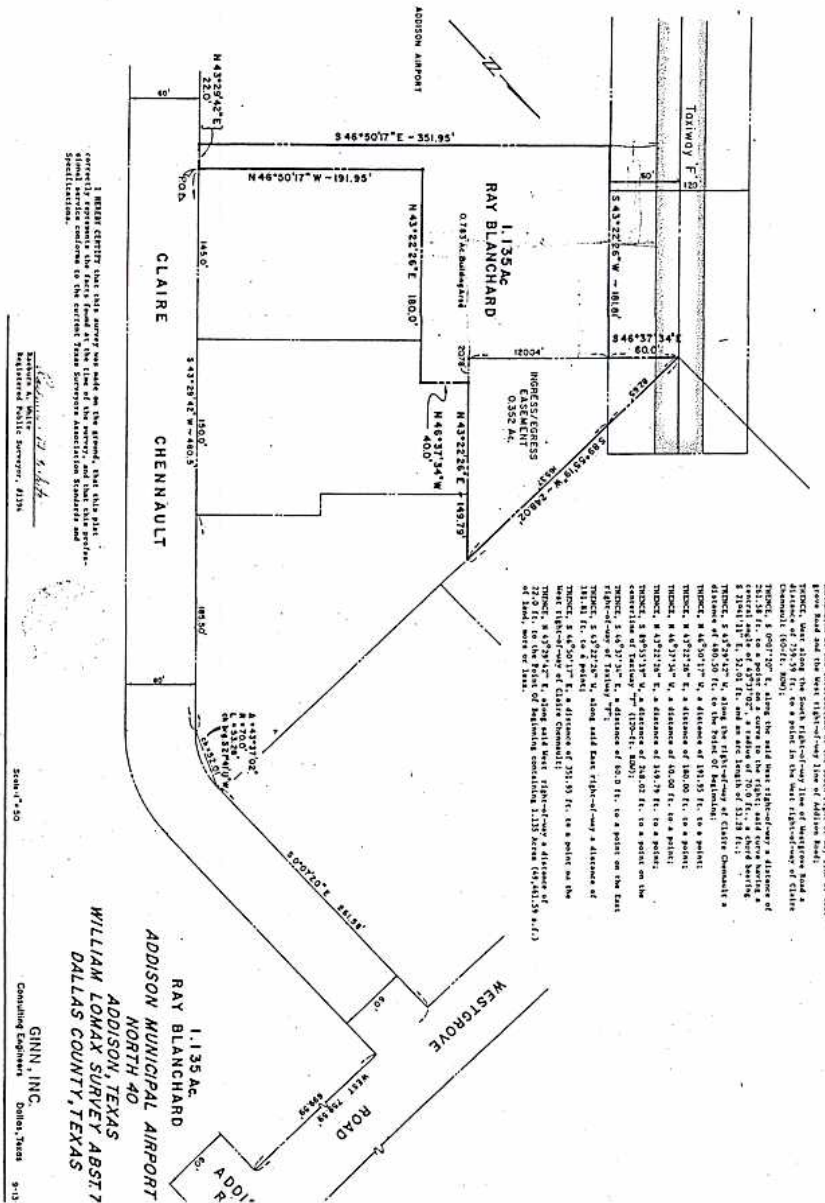
[illegible]

Exhibit 3

Estoppel Letter On Bank Letterhead

RE: Ground Lease ("Lease") dated September 28, 1983 (the "Ground Lease"), by and among the Town of Addison, Texas, a municipal corporation (the "City", the same being the Town of Addison, Texas) and Addison Airport of Texas, Inc., a Texas corporation, as Landlord (the City now being the sole Landlord under the Lease, the "Base Lease" (as defined in the Ground Lease) having expired, and the City alone being referred to herein as the "Landlord") and Parkway Jet, Inc., as tenant; the said Ground Lease then having been conveyed to Franklin First Federal Savings Bank by Substitute Trustee's Deed executed May 7, 1991; the said Ground Lease then having been assigned by Franklin First Federal Savings Bank to Aquila Leasing Company; the said Ground Lease then having been assigned by Aquila Leasing Company to C. C. Hangar L. P. the "Tenant" by that Assignment Agreement entered into on _____, whereby Landlord leases to Tenant certain real property (the "Real Property") located at 4575 Claire Chennault at Addison Airport in Dallas County, Texas, as specifically described in the Ground Lease (and being approximately 1.135 acres in Dallas County, Texas), and being generally described as the "Demised Premises" in the Terms and Conditions set forth in the Ground Lease.

Gentlemen:

_____ (the "Bank") intends to make a loan to _____, a _____ *[State of Formation]* *[Co., Inc., L.L.P., L.L.C., or individual]*, which is a [wholly owned or subsidiary] of/ by Tenant, which loan (the "Loan") in the amount of \$_____ will be secured by, among other things a lien against the leasehold interest of Tenant in the Real Property created pursuant to a leasehold deed of trust (the "Leasehold Deed of Trust") to be executed by Tenant to _____, as Trustee for the benefit of Bank, which Deed of Trust shall be subordinate and inferior to the Ground Lease and Landlord's lien (contractual and statutory) and other rights thereunder and all terms and conditions thereof, which Deed of Trust shall be in substantially the form of the Deed of Trust attached hereto.

The Bank has advised Tenant that Bank requires the written acknowledgment of Landlord to the execution by Tenant of the above-described Deed of Trust and the written acknowledgment and consent of the Landlord to the statements set forth in this letter.

Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, Landlord hereby specifically states as follows:

1. Landlord takes notice of the Leasehold Deed of Trust and the subordinate and inferior lien provided for therein being impressed solely against the leasehold interest of Tenant in the Real Property.
2. The Lease has not been modified, altered or amended except as described herein.
3. Landlord has no actual knowledge of the existence of any lien against the Real Property other than that created by the Ground Lease and any lien for taxes as may be provided by law.
4. Landlord will give to Bank, at the address of Bank specified in this letter or at such other address as Bank may hereafter designate in writing to Landlord, prompt written notice of any default by Tenant under the Lease simultaneously with the giving of such notice to Tenant, and Bank shall have the right, but not the obligation, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make such payment as may be necessary or appropriate to cure any such default so specified. Landlord shall not exercise Landlord's right to terminate the lease without first giving Bank the notice provided for herein and affording Bank the right to cure such default as provided for herein.
5. For the purposes of this letter, any notice to Bank may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in United States mail, postage prepaid, registered, or certified mail, return receipt requested, addressed to Bank at the above-described address.
6. If Bank or a third party (provided such third party is approved by Landlord in accordance with the terms of the Lease for approval of an assignee) succeeds to the interest of Tenant in and to the Lease and the Real Property by means of foreclosure under the Deed of Trust, by means of a transfer in lieu of such foreclosure, or by any other means due to the failure or inability of Tenant to pay the Loan secured by the Deed of Trust, Landlord shall thereafter accept, recognize and treat Bank or such approved third party as the tenant under the Lease and Landlord shall continue to perform all of its obligations under the Lease. Bank may thereafter, with the written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, assign its leasehold right, title, and interest in and to the Ground Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord withholding consent, it shall be deemed to be reasonable for Landlord to withhold its consent when any one or more of the following apply:
 - (a) the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of Addison Airport as determined by Landlord;

(b) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of Landlord in light of the duties, obligations, and responsibilities of the tenant under the Ground Lease at the time when the consent is requested;

(c) the proposed assignee's intended use of the demised premises as defined in the Ground Lease is inconsistent with the Ground Lease;

(d) the proposed assignment would cause Landlord to be in violation of another lease or agreement to which Landlord is a party or to which Landlord or the Addison Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);

(e) if at any time consent is requested or at any time prior to the granting of consent, tenant is in default under the Ground Lease or would be in default under the Ground Lease but for the pendency of a grace or cure period; or

(f) the proposed assignee does not intend to occupy the entire demised premises as described in the Ground Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Ground Lease.

For purposes hereof and any applicable law, and without limitation as to other grounds for Landlord delaying consent, it shall be deemed to be reasonable for Landlord to delay its consent for a period of 45 days after the receipt by Landlord of all information requested by Landlord regarding or in connection with the proposed assignment and the proposed assignee.

7. To the actual knowledge of Landlord no rent has been paid more than thirty (30) days in advance of its due date.

Very truly yours,

(Name of Bank)

By: _____

Name: _____

Its: _____

Acknowledged and consented to the _____ day of _____, 20__.

TOWN OF ADDISON, TEXAS

By: _____

By: _____

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Cc: Real Estate Manager
Addison Airport
16051 Addison Road, Suite 220
Addison, Texas 75001

Exhibit 4

Proposed Site Plan for 4575 Claire Chennault

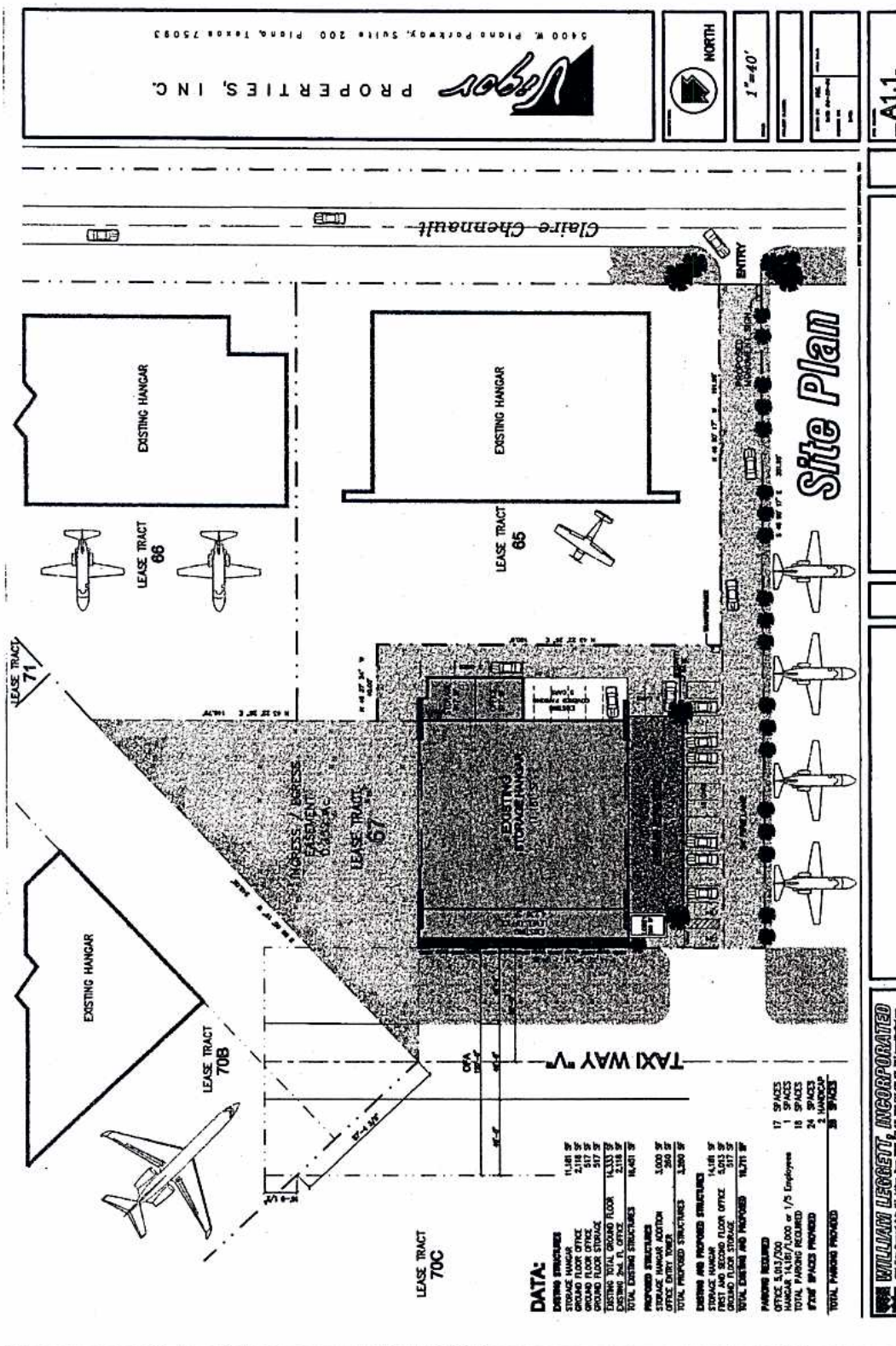


Exhibit 5

Lease Guaranty by Vigor Properties, Inc. (To be executed in escrow at closing)

LEASE GUARANTY ("Guaranty")

WHEREAS, a Ground Lease was entered into as of September 28, 1983 between the Town (City) of Addison, Texas and Addison Airport of Texas, Inc., together as landlord, and Parkway Jet, Inc., as tenant, of a 1.135 acre (49,461.59 square feet) tract of land located at 4575 Claire Chennault at Addison Airport (the said tract of land being referred to in the Ground Lease and herein as the "*Demised Premises*"); and

WHEREAS, the Town of Addison, Texas is the sole landlord under the said Ground Lease (the "*Base Lease*" which is referred to in the Lease (being an Agreement for Operation of the Addison Airport between the Town of Addison and Addison Airport of Texas, Inc.) having expired); and

WHEREAS, by various assignments and conveyances, the tenant's leasehold interest in the Demised Premises has been conveyed to C. C. Hanger, L.P., who is the current tenant under the said Ground Lease; and

WHEREAS, Tenant has proposed to construct certain additional improvements on the Demised Premises, and in connection therewith Landlord and Tenant have agreed to execute an First Amendment to Ground Lease (the "*First Amendment*") setting forth, among other things, certain terms and conditions related to the construction of such improvements (a true and correct copy of which First Amendment is attached hereto as "Exhibit B") (the said Ground Lease, as amended by the First Amendment or as otherwise amended hereafter, being herein referred to as the "*Lease*"; and

WHEREAS, as a condition of the execution by the Town of Addison of the First Amendment and for the purpose of inducing the Town of Addison, Texas to enter into the Amendment, the Town of Addison has required that a guaranty be executed and delivered by the undersigned.

NOW, THEREFORE, in consideration of the above and foregoing recitals and premises (which recitals and premises are true and correct and are incorporated herein), and in order to induce the Town of Addison, Texas ("*Landlord*") to execute the said First Amendment to Ground Lease, the undersigned (hereinafter referred to as "*Guarantor*", whether one or more) hereby unconditionally guarantees unto Landlord the complete, full and prompt payment and performance of (i) all of the rent and other sums or charges which may ever become due and payable by Tenant under the Lease, including, without limitation, rent that becomes due and payable by reason of the exercise of any power to accelerate granted to Landlord under the Lease and any damages or other sums that

become payable on account of any default by Tenant under the Lease, and (ii) all of the other obligations, liabilities and duties of Tenant under the Lease (the rental, other sums and charges and other obligations, liabilities and duties described in the foregoing clauses (i) and (ii) being hereinafter collectively referred to as the "*Obligations*"). In the event of default by Tenant in the payment or performance of any of the Obligations, Guarantor shall on demand of Landlord pay the amount due to Landlord at the place and in the manner specified in the Lease and perform all of the other Obligations of Tenant with respect to which Tenant is then in default. For the purposes hereof, the term "*Tenant*" shall include any assignee of Tenant and the term "*Lease*" shall include any amendment or modification of the Lease effected by Landlord and Tenant, with or without the consent or knowledge of Guarantor.

Guarantor represents and warrants (which representations and warranties shall be deemed to have been renewed by the Guarantor upon each payment under the Lease) that:

- a. it (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization (the same being the State of _____); (ii) has all requisite corporation power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted; and (iii) is qualified to do business in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure to so qualify would have a material adverse effect on its condition (financial or otherwise), assets, nature of assets, liabilities (including, without limitation, tax, and environmental liabilities) or prospects;
- b. it has all necessary corporate power and authority to execute, deliver and perform its obligations under this Guaranty; the execution, delivery and performance by the Guarantor of this Guaranty have been duly authorized by all necessary corporate action; and this Guaranty has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles; and
- c. neither the execution and delivery by it of this Guaranty nor compliance with the terms and provisions hereof by the Guarantor will conflict with or result in a breach of, or require any consent under, its articles of incorporation or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any material agreement or instrument to which it is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of its revenues or assets pursuant to the terms of any such agreement or instrument.

Landlord shall not be required, before invoking the benefits of this Guaranty, to institute suit against or exhaust its remedies with respect to Tenant or any other person liable for the Obligations or to enforce its rights with respect to any security which shall have ever been given to secure the payment and performance of the Obligations; and the obligations of Guarantor hereunder shall not be released or impaired in any way by any neglect, delay, omission, failure or refusal of Landlord to take or prosecute any action for the collection or enforcement of the Obligations, or any failure of Landlord to give Guarantor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Obligations. Suit may be brought and maintained against Guarantor without the joinder of Tenant or any other person, and in the event that there is more than one guarantor of the Obligations, Landlord may (i) bring suit against all guarantors jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of such guarantors for such consideration as Landlord may deem proper, and (iii) release one or more of the guarantors from liability without impairing the liability of the guarantors not so released; and no action brought by Landlord against any one guarantor of the Obligations shall impair the right of Landlord to bring suit against any remaining guarantor or guarantors.

The obligations of Guarantor shall be irrevocable and unconditional and absolute, irrespective of the genuineness, validity, regularity or enforceability of the Lease or any security given for the Obligations or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor, and Guarantor waives the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty, and agrees that the obligations of Guarantor shall not be affected by any circumstances, whether or not referred to in this Guaranty which might otherwise constitute a legal or equitable discharge of a surety or a guarantor. Without limiting the generality of the foregoing, Guarantor agrees that Landlord may, in its sole and absolute discretion, without notice to or consent by Guarantor, and without in any way releasing or impairing or otherwise affecting any liability or obligation of Guarantor hereunder (i) waive compliance by Tenant with any of its Obligations or covenants under the Lease or waive any default thereunder, or grant any other indulgence with respect to the Lease, (ii) modify, amend, supplement, add, or otherwise change any provision of the Lease, (iii) grant extensions or renewals of the Lease or the Obligations thereunder, or effect any release, compromise or settlement in connection therewith, including any release of the liability of Tenant or any one guarantor or other person liable on the Obligations or any part thereof, (iv) transfer its interest in the Demised Premises covered by the Lease or its rights under this Guaranty, (v) consent to the assignment or other transfer or conveyance by Tenant of its rights and interest under the Lease, and (vi) deal in all respects with Tenant and the Obligations as if this Guaranty were not in effect. Guarantor further waives (a) notices of acceptance of this Guaranty, (b) notices to Guarantor of any kind in any circumstances whatsoever, including, without limitation, notice of dishonor and notice of any default by Tenant under the Lease and all waivers or indulgences granted by Landlord to Tenant under the Lease, (c) demand, protest, diligence, presentment and suit on the part of Landlord in the enforcement of any

of the Obligations, and (d) any requirement that at any time any action be taken by any person against the Tenant or any other person.

This Guaranty shall be enforceable despite any exculpation from liability granted to Tenant under the Lease, with the same force and effect as if no such exculpation from liability had been granted to Tenant.

Guarantor agrees to pay the reasonable attorneys' fees and all other costs and expenses incurred by Landlord in order to enforce its rights under this Guaranty.

In the event any payment by Tenant to Landlord is held to constitute a preference under the bankruptcy laws, or if for any other reason Landlord is required to refund or return such payment or pay the amount thereof to any other party (as a result of any insolvency, bankruptcy or reorganization of Tenant, or for any other reason), such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability hereunder, but Guarantor agrees to pay such amount to Landlord upon demand and the Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time. In addition to and without limiting the foregoing or any other provision of this Guaranty, Guarantor's liability under this Guaranty shall in no way be affected by (i) the release or discharge of Tenant in any creditors', receivership, bankruptcy or other proceedings, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Tenant or its assets, or any resulting release or discharge of any obligation of the Lessee; (ii) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's said liability under the Lease, resulting from the operation of any present or future provision of the United States Bankruptcy Code or other statute or from the decision in any court; (iii) the rejection or disaffirmance of the Lease in any such proceedings; (iv) the assignment or transfer or other conveyance of the Lease by Tenant; (v) any disability or other defense of Tenant; (vi) the existence of any claim, setoff or other rights, which the Guarantor may have at any time against the Tenant, the Landlord or any other entity or person, whether in connection herewith or any unrelated transactions; (vii) any change in the corporate existence, structure or ownership of the Tenant; or (viii) the cessation from any cause whatsoever of the liability of Tenant.

If acceleration of the time for payment of any amount payable by the Tenant under the Lease is stayed upon the insolvency, bankruptcy or reorganization of the Tenant or for any other reason, all such amounts otherwise subject to acceleration under the terms of the Lease shall nonetheless be payable by the Guarantor hereunder forthwith on demand by the Landlord.

Guarantor waives all rights of a guarantor or surety under Chapter 34 of the Texas Business and Commerce Code. Any indebtedness of Tenant held by Guarantor is hereby subordinated to this Guaranty; and any such indebtedness of Tenant to Guarantor, if Landlord so requests, shall be collected, enforced and received by Guarantor as trustee

for Landlord and shall be paid over to Landlord in order to satisfy the Obligations guaranteed hereunder.

Landlord in its sole discretion may apply all payments received by it from Tenant, Guarantor or any other guarantor under any other instrument, or realized by it from any security in such manner and order or priority as Landlord sees fit, to any of the Obligations of Tenant, whether or not any of the Obligations to which any payment is applied are due at the time of such application.

All payments required to be made by the Guarantor hereunder shall be made without setoff or counterclaim and free and clear of and without deduction or withholding for or on account of, any present or future taxes, levies, imposts, duties or other charges of whatsoever nature imposed by any government or any political or taxing authority as required pursuant to the Lease.

If this Guaranty is signed by more than one person, then all the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, executors, administrators, successors, and assigns. The word "person" as used herein includes natural persons and entities of all kinds.

This Guaranty shall apply to the Lease, any extension or renewal thereof and to any holdover term following the expiration of any Lease Term or renewal thereof. The Guarantor's obligations hereunder shall remain in full force and effect until all Obligations shall have been paid in full and the Lease shall have terminated or expired.

This Guaranty shall be construed in accordance with and governed by the laws of the State of Texas and, with respect to any conflict of law provisions, such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, construction, and enforcement of this Guaranty. Venue for any action under this Guaranty shall lie in Dallas County, Texas.

For purposes hereof, notices and all other communications shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight, or (iv) sent via confirmed telecopy or facsimile (fax) transmission. Notice shall be deemed given: when received if delivered personally or sent via telecopy or facsimile transmission with written confirmation of receipt; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier.

This Guaranty shall be binding upon Guarantor and its successor and assigns, and the heirs, executors, administrators, successors and assigns of each of the persons comprising Guarantor, and shall inure to the benefit of Landlord and its successors and

assigns. This Guaranty is for the benefit of the Landlord and its successors and assigns, and in the event of an assignment or other conveyance by Landlord of any amounts payable under the Lease or any other provision of the Lease, the rights hereunder, to the extent applicable to the Lease so assigned or conveyed, may be assigned or otherwise conveyed in connection with such assignment or conveyance. This instrument may not be changed, modified, waived, discharged or terminated orally or in any manner other than by an agreement executed in writing by Guarantor and Landlord.

EXECUTED this _____ day of _____, 2004.

GUARANTOR:

VIGOR PROPERTIES, INC.

By: _____
Howard D. Kollinger, President

Address of Guarantor:

Telephone: _____

Telecopier: _____

Council Agenda Item: #R17**SUMMARY:**

This item is for the award of a bid by Texas Standard Construction for Paving Repair and Storm Sewer Modifications for the Fuel Truck Roadway at Addison Airport.

FINANCIAL IMPACT:

Budgeted Amount: \$110,000

Cost: \$108,565

Funding Source: Airport Operations Fund and Routine Airport Maintenance Program (RAMP) Fund

BACKGROUND:

Each year the airport receives \$30,000 from TxDOT Aviation Division for RAMP, which requires a \$30,000 local match, and therefore provides \$60,000 that can be used for routine airport maintenance projects. So far \$13,000 has been spent on roof repairs, \$5,810 has been spent on engineering for this project, leaving \$41,290 in RAMP funds for this project. An additional \$70,000 is available from the Airport Operations Fund for this project.

The bid process was set up with alternates such that the repairs were prioritized in order of need.

Four bids were received for this project. A tabulation of the bids received is attached. Covenant Construction's bid is considered non-responsive as they did not break out the alternates as required. Further analysis of the two lowest bids from Pioneer and Texas Standard Construction follows:

Fuel Truck Road Bids		7/28/2004			
	Base Bid	With Alt. 1	With Alt. 1,2	With Alt. 1,2,3	With Alt. 1,2,3,4
Pioneer	27,777.78	43,177.78	47,944.45	78,711.12	116,399.08
Tx. Std	38,800.00	50,200.00	55,400.00	78,045.00	108,565.00

Even though Pioneer submitted the low base bid, Texas Standard Construction is the low bidder considering all alternates. Texas Standard's references checked out very satisfactory.

RECOMMENDATION:

Staff recommends that a contract, including the Base Bid and Alternates 1 through 4, for the Paving Repair and Storm Sewer Modifications for the Fuel Truck Roadway be awarded to, and, that the City Manager be authorized to enter into a contract with Texas Standard Construction in the amount of \$108,565.00.

Paving Repair and Storm Sewer Modifications for the Fuel Truck Roadway

BID NO 04-27

DUE: July 28, 2004 @ 2:00PM

BIDDER	SIGNED	Bid Bond	Base Bid	Alternate #1	Alternate #2	Alternate #3	Alternate #4	Total Base + Alternates
Texas Standard Construction	y	y	\$38,800.00	\$11,400.00	\$5,200.00	\$22,645.00	\$30,520.00	\$108,565
Pioneer	y	y	\$27,777.78	\$15,400.00	\$4,766.67	\$30,766.67	\$37,687.96	\$116,399
Jim Bowman Construction LP	y	y	\$39,200.00	\$16,400.00	\$12,300.00	\$48,500.00	\$33,400.00	\$149,800
Covenant Construction	y	y	\$187,668.00	included	included	included	included	\$187,668
Gibson & Associates	y	y	\$57,200.00	\$24,800.00	\$15,000.00	\$62,200.00	\$55,300.00	\$214,500

Minok Suh

Minok Suh, Purchasing Coordinator

Cory Bayden

Witness

Council Agenda Item: #R18

SUMMARY:

This item is to receive authorization for Staff to transfer DART Local Assistance Program/Congestion Management System (LAP/CMS) funds from the Addison Road Widening and Cotton Belt Railroad Quiet Zone projects to the Arapaho Road Phase III and Town Wide Signals Upgrade projects, and the Spectrum Drive Project.

FINANCIAL IMPACT:

None

BACKGROUND:

Now that bids have been received on the Arapaho Phase III construction project, the funding requirements for this project are now much more clear and appropriate fund transfers can be made. Other projects also require fund transfers.

The Town's Addison Road Widening Project currently has \$177,405.16 in our Project No. 84300 account, and, \$1,555,178.00 programmed in a DART LAP/CMS account. This money is not needed to fund the upcoming project to widen Addison Road from Belt Line Road to Arapaho Road. \$ 2,470,000.00 in bond money is currently available for this project. Accordingly, staff wishes to make an internal transfer of \$177,405.16 from our Addison Road Widening account to our Arapaho Road Phase III account, and, transfer \$1,000,000.00 to the Arapaho Phase III project and \$555,178.00 to the Spectrum Road project from our Addison Road Widening DART LAP/CMS account.

The Town has received a Federal Grant of \$465,172.00 for our Town Wide Signals Upgrade project. \$155,043.00 of DART LAP/CMS funds has been received to cover our local match for that grant. The Town has also received a grant of \$196,000.00 from Dallas County for this project that requires a local match of \$196,000.00. Staff wishes to transfer \$196,000.00 from the Cotton Belt Railroad Quiet Zones project to the Town Wide Signals Upgrade project. The Cotton Belt Railroad Quiet Zones project is currently programmed at \$695,000.00.

Transfer of \$196,000.00 out of the Cotton Belt Quiet Zones project will leave \$499,000.00 programmed for Quiet Zones. The Town has applied for a Federal Grant to construct quiet zones at the Addison Road and Surveyor Road railroad crossings and has received word that our application has scored very high. We are programmed to receive a grant of \$504,000.00 toward a \$630,000.00 project. Accordingly, this Federal Grant requires a local match of \$126,000.00. Subtracting this amount leaves a surplus of \$373,000.00 in the Cotton Belt Quiet Zones account that can be re-programmed to the Arapaho Road Phase III Project.

RECOMMENDATION:

Council authorize Staff to internally transfer \$177,405.16 from our Addison Road Widening account to our Arapaho Road Phase III account. In addition, establish a new DART LAP/CMS account for the Spectrum Drive project and transfer \$1,000,000 from the Addison Road Widening project to the Arapaho Road Phase III project, and \$555,178 from the Addison Road Widening project to the Spectrum Drive project. Finally, authorize staff to transfer \$196,000 from the Cotton Belt Railroad Quiet Zones project to the Town Wide Signals Upgrade project and \$373,000 from the Cotton Belt Railroad Quiet Zones project to the Arapaho Road Phase III project.

Council Agenda Item: #R19

SUMMARY:

This item is to receive authorization for the City Manager to enter into a Contract Agreement with HNTB Engineers, in the amount of \$168,552.73, for the design and inspection of the resurfacing of Belt Line Road from Dallas Parkway to Marsh Lane.

FINANCIAL IMPACT:

Funding Source: \$1.25 million from the Year 2000 Bond Sale

BACKGROUND:

For many years the surface conditions of Belt Line Road have been deteriorating. About 3 years ago the Town began a process of grooving the surface on the roadway to improve traction conditions, especially during wet weather events. This process was only a temporary solution. The pavement grooving did not work as well as expected. As a result of the success of the “slab jacking” process used on Midway Road, sufficient funds were freed up to accommodate the resurfacing of Belt Line Road (\$1.25 million). Public Works staff is proposing the use of an “Asphalt” material over the top of the existing concrete surface on the existing roadway. This contract will cover expenses associated with the design and inspection of the installation of this new asphalt surface. The proposed agreement is attached. It is intended that the project will be completed in Fall 2004. However, should weather conditions restrict the contractor’s ability to complete the work, the contract will be structured to permit the asphalt overlay to be completed in the fall and other items, including concrete and brick crosswalks, to be constructed as weather permits. It is possible that the overall project may not be completed until spring of 2005. This schedule permits Belt Line Road to be overlaid before the winter to improve roadway surface conditions.

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to enter into an agreement with HNTB Corporation, in the amount of \$168,552.73, for the design and inspection of the resurfacing of Belt Line Road Staff, from Dallas Parkway to Marsh Lane.

AGREEMENT

THIS AGREEMENT is made by and between HNTB Corporation, hereinafter called "ENGINEER", and the Town of Addison, Texas, hereinafter called "OWNER."

WHEREAS, OWNER desires ENGINEER to perform certain work set forth in Section 2, Scope of Services.

WHEREAS, the ENGINEER has expressed a willingness to perform said services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Section 2 of this Agreement.

NOW, THEREFORE, all parties agree as follows:

SECTION 2. SCOPE OF SERVICES

The following Basic and Additional Services, when authorized in writing by a notice-to-proceed, shall be performed by the ENGINEER in accordance with the OWNER's requirements to provide preliminary engineering and design services from the Dallas North Tollway to Marsh Lane along Beltline Road in Addison, Texas.

Project Description

The project limits are from the Dallas North Tollway to Marsh Lane along Beltline Road in the Town of Addison a distance of approximately 2 miles (10,600 feet). The scope of work for this street project has two phases: 1.0 Preliminary Engineering and Design Services and 2.0 Construction Engineering and Inspection. The work consists primarily of pavement rehabilitation through an asphalt overlay, utility structure adjustments and final pavement striping. This work does not include utility relocations or replacements. The scope of work for each phase is discussed below. All design and construction management functions will be performed directly by HNTB Corporation with the exception of construction materials testing and other specialty engineering required in the design and/or construction phases of the project.

1.0 Preliminary Engineering and Design Services Proposal

1.1 PRELIMINARY ENGINEERING PHASE

In this initial phase, the existing pavement conditions will be evaluated and appropriate rehabilitation strategies to obtain a 10 year design life will be recommended. The following tasks will be completed: data collection; field investigation; base map preparation; and a preliminary engineering summary.

Data collection – Engineer will attend one kick-off meeting with Owner's staff. A review of existing records will be made to acquire information on existing pavement structures and utilities. Existing aerial photos and planimetric drawings

of the street will be obtained from the Public Works Department, as well as computer drawing files to aid in development of preliminary plan view drawings of the streets.

Field Investigation – The field investigation will include a visual pavement condition survey, assessment of the number of underground drainage and utility structures requiring adjustment and an inventory of any miscellaneous items which may require reconstruction or adjustment under this contract. The field investigation will also include an assessment of the existing sidewalk ramps and the need for new ramps.

Base Mapping – Utilize existing aerial photos and planimetric drawings of the street, as well as other computer drawing files to develop preliminary plan view drawings of the streets. All drawings will be provided in MicroStation format.

Obtain from the Town and show on the plan view drawings, business names and addresses within the project area.

Preliminary Engineering Summary – The results of the Preliminary Engineering phase will be summarized in a letter report, which will include the design recommendations and opinions of probable construction cost for the project. Coordination with the Owner during development and finalization of rehabilitation designs will ensure concurrence with the recommendations. This would include one meeting to discuss results of work (prior to report preparation) and one meeting to discuss Owner comments after review of report.

1.2 DESIGN SERVICES

Following the Owner's Authorization, this phase includes preparation of contract documents, public information plan, design submittals, and bidding assistance.

Contract Documents – Construction plans, specifications, and other contract documents will be prepared based on Town of Addison and the North Central Texas Council of Governments Standard Specifications for Public Works Projects. The Contract Documents will include the Owner's most recent front-end documents with the relevant project data, applicable Standard Specifications, Special Provisions and Technical Specifications as required for the project. Engineer will coordinate with the Owner on standards currently being developed. Updated standard details and specifications will be incorporated in the bid package as they are available.

The rehabilitation plan will include existing and proposed curb/gutter lines, driveways, sidewalks, at-grade utility structures, existing and proposed pavement markings and abutting property addresses.

The proposed sheet list includes:

1. Cover sheet

2. General notes and legend (2 sheets)
3. Project layout (2 sheets)
4. Typical sections (1 sheets)
5. Rehabilitation plan (12 sheets at 40 scale)
6. Traffic Control Phasing and Details (6 sheets)
7. Striping & Signing (6 sheets)
8. Special Details as required (2 sheets)
9. Standard Details – Roadway, Utility, etc. (3 sheets)

Public Information Meetings – The purpose of the public information process for this project is to insure that the impacted businesses along the project have a basic understanding and awareness of the nature and impacts of this public works project. The Owner will coordinate and distribute the meeting announcements. The Owner will copy and distribute all information. A maximum of two public meetings attended by the Engineer are included.

Design Submittals – A draft (70%) submittal of plans (no contract document or estimate) will be made to the Owner and review comments incorporated prior to the 95% submittal. The 95% submittal will include plans, quantities, contract documents, and opinion of probable construction cost. Comments from the reviews will be incorporated prior to finalizing the construction documents. Two meetings to discuss the 70% and 95% review comments with Owner's staff are included. Written responses to review comments will be provided with each subsequent submittal.

Bidding – This task includes: printing and distribution of construction documents (provide 3 11"x17" paper sets of plans and 3 contract documents to the Town for their records and 20 CD's containing plan and project manual information for distribution to contractors, suppliers and plan rooms); attendance at the Pre-Bid Meeting; preparation of Addenda required to change or clarify the construction documents; tabulating bids; and making a recommendation for award of the contract, attendance at the preconstruction meeting.

2.0 Construction Engineering and Inspection

It is anticipated the Owner will require assistance with construction inspection and management throughout the construction duration. It is understood that the Owner will assist the Engineer with construction inspection activities. The following tasks will be performed by the Engineer:

- Provide input for constructability during the design phase.
- Act as the Owner's representative in coordination with other public and private agencies and utilities affected by or involved with the construction project. Seek solutions for construction conflicts.
- Monitor construction activities for general conformance to the Contract Documents including office/on-site observations. Prepare daily construction inspection reports. Notify the Contractor of deficiencies in the Work and coordinate the resolution of deficient issues.

- Assist in working with the Contractor to address RFI's, shop drawings, and related questions concerning design issues to support timely response and resolution of issues.
- Review requests for alternatives and substitutions from the Contractor and submit them, together with Engineer's recommendations, to Owner for consideration.
- Review and make recommendations on contractor submitted shop drawings and other required submittals.
- Assure motorist and pedestrian access within the project limits as required by contract specification and traffic control plans. Review the construction work zone traffic control for conformance to the traffic control plan. Notify the Contractor of deficiencies in the traffic control and monitor the Contractor's effective response in a timely manner.
- Arrange for review and inspection for specialty construction items.
- Review testing results for conformance to the contract. Coordinate revised means and methods with the Contractor to achieve required test results. Review Contractor submitted results of material testing for conformance to specifications. Monitor off site testing as necessary.
- Prepare change orders for revisions to plan work and/or extra work items added to the Contract. Evaluate any Contractor claims for time extensions.
- Prepare preliminary and final deficiencies lists at intervals during the overall Project duration. Assure the satisfactory resolution of all deficient Work.
- Measure all project pay items and calculate final pay quantities. Present the calculations to the contractor for certification of final payment. Prepare the final documentation for payment and certify the amounts due the Contractor. Review lien waivers as required by specification.
- Assemble supporting documentation and assist the Owner in evaluating monetary claims for damages if submitted by the Contractor.
- Deliver to the Town all relevant construction documentation generated as a result of the project.

SECTION 3. PAYMENT

OWNER shall pay ENGINEER for services authorized in writing as properly performed by ENGINEER on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing.

Basis of Compensation

OWNER shall make payment monthly to ENGINEER based upon statements submitted by the ENGINEER for work performed.

Compensation for performing Preliminary Engineering and Design Services shall be as shown in Exhibit A on a Lump Sum amount of \$102,345.27 for the Design Phase.

Compensation shall be as shown in Exhibit A on a Cost Plus to a maximum of \$66,207.46 for the Construction Services Phase.

SECTION 4. RESPONSIBILITIES

OWNER shall perform and provide the following in a timely manner so as not to delay the Services of ENGINEER, and ENGINEER may rely on the accuracy and completeness of the following:

- Authorize ENGINEER in writing to proceed [authorization to proceed is given by the execution of this Agreement].
- Place at ENGINEER's disposal all available information pertinent to the Project, including previous reports, drawings, specifications or any other data relative to the design or construction of the Project.
- Designate in writing a person to act as OWNER's representative, such person to have complete authority to transmit instructions, receive information, and interpret and define OWNER's decisions with respect to ENGINEER's Services for the Project.
- Render decisions and approvals as promptly as necessary to allow for the expeditious performance of ENGINEER's Services.
- Obtain, arrange, and pay for all surveys, advertisements for bids, permits, licenses, easements, rights-of-way, and access necessary for the performance of ENGINEER's Services.
- Make OWNER's facilities available to ENGINEER as required for performance of the Services under this Agreement, and provide labor and safety equipment required for access.
- Require all construction contracts to include provisions requiring Contractors to indemnify OWNER and ENGINEER and requiring Contractors to name OWNER, ENGINEER, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as Additional Insureds on Contractors' liability insurance policies.
- Maintain property insurance on all pre-existing physical facilities.
- Provide a Builder's Risk All-Risk insurance policy for full replacement value for all Project work, which will include, without limitation, coverage for loss due to defects in materials and workmanship and errors in design, and will include OWNER, ENGINEER and Contractor as insureds.
- Give prompt written notice to ENGINEER whenever OWNER becomes aware of any development that does or may affect the scope or timing of ENGINEER's Services, or any defect in the Services of ENGINEER or its subconsultants, or the work of construction Contractors.
- Advise ENGINEER of the identity and scope of services of any independent consultants retained by OWNER to provide services in regard to the Project.

Unless otherwise provided in this Agreement, OWNER shall bear all costs incident to compliance with the above items.

SECTION 5. TIME FOR PERFORMANCE

ENGINEER shall perform all services as provided for under this Agreement in a proper, efficient and professional manner in accordance with the terms of this Agreement.

The following schedule is proposed to meet the Owner's goals. The schedule is based from the time a notice to proceed is given to start the design work.

Project Kick-off meeting	1 Day
Field Investigation	Week 1
Preliminary Engineering Summary	Week 2
Owner Review & Approval	Week 2
70% Submittal (Plans only)	Week 4
Owner Review	Week 4
95% Submittal (Plans, manual, & estimate)	Week 5
Owner Review	Week 5
100% Submittal (Complete contract documents)	Week 6
Advertising of Construction Project	Week 6
Bidding Review	Week 9
Award of Construction Contract	per Town Council action
Design and Owner Review Total	6 Weeks
<u>Bid Phase Total</u>	<u>3 Weeks</u>
Estimated Design and Bid Phase Total	9 Weeks

The proposed schedule for advertising, pre-bid conference and bid opening as shown above to meet requirements of the Owner is estimated at three weeks.

In the event ENGINEER's performance of this Agreement is delayed or interfered with by acts of the OWNER or others, ENGINEER may request an extension of time for the performance of same as hereinafter provided. If such delay is in excess of 60 days on any one occurrence or a cumulative delay of over 180 days, ENGINEER shall have the right to renegotiate the remainder of this contract. A delay shall be defined as any event caused by others that substantially inhibits the ENGINEER from proceeding with its services on the project. This shall include, but is not limited to, OWNER reviews, right-of-way negotiations and awaiting critical information to be supplied by OWNER or franchised utility companies.

No allowance of any extension of time, for any cause whatever, shall be claimed or made by the ENGINEER, unless ENGINEER shall have made written request upon OWNER for such extension within 14 calendar days after the cause for such extension occurred, and unless OWNER and ENGINEER have agreed in writing upon the allowance of additional time to be made. Provided, however, ENGINEER shall not be considered in default hereunder in delays are caused by reasons beyond its reasonable control.

SECTION 6. DOCUMENTS

All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer files, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of the OWNER. All completed instruments of service shall be professionally sealed as may be required by law or by OWNER.

Such instruments of service, together with necessary supporting documents, shall be delivered to OWNER, and OWNER shall have unlimited rights, for the benefit of OWNER, in all instruments of service, including the right to use same on any other work of OWNER without additional cost to OWNER. If, in the event, OWNER uses such instruments of service on any work of OWNER other than that intended in the Scope of Services, defined in Section 2, under those circumstances OWNER hereby agrees to protect, defend, indemnify and hold harmless the ENGINEER, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of service with respect to such other work except where ENGINEER is hired to modify such instrument for such other work.

ENGINEER agrees to and does hereby grant to OWNER a royalty-free license to such instruments of service which ENGINEER may cover by copyright and to designs as to which ENGINEER may cover by copyright and to designs as to which ENGINEER may assert any rights or establish any claim under the design patent or copyright laws. ENGINEER, after completion of the services, agrees to furnish the originals of such instruments of service to the OWNER. ENGINEER may, however, retain copies of any and all documents produced. The license granted herein by ENGINEER shall survive termination of this Agreement for any reason.

SECTION 7. TERMINATION

OWNER may suspend or terminate this Agreement for cause or without cause at any time by giving five (5) days written notice to the ENGINEER. In the event termination is for cause however, such shall be in accordance with section 14 hereof. In the event suspension or termination is without cause, payment to ENGINEER, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by OWNER to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to OWNER.

Should the OWNER require a material modification of this Agreement, and in the event OWNER and ENGINEER fail to agree upon such modification to this Agreement, OWNER shall have the option of terminating this Agreement and the ENGINEER's services hereunder at no additional cost other than the payment to ENGINEER, in

accordance with the terms of this Agreement, for the services reasonably determined by OWNER to be properly performed by the ENGINEER prior to such termination date.

ENGINEER may terminate this Agreement upon written notice to OWNER in the event of substantial failure by the OWNER to perform in accordance with the terms of this Agreement. OWNER shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the ENGINEER. In the event the parties cannot agree upon an acceptable cure within a reasonable period of time from the date of notice, ENGINEER may terminate this Agreement.

SECTION 8. INSURANCE

ENGINEER shall provide and maintain Worker's Compensation and Employer's Liability Insurance for the protection of ENGINEER's employees, as required by law. ENGINEER shall also provide and maintain in full force and effect during the term of this Agreement, insurance (including insurance covering the operation of automobiles, trucks and other vehicles) protecting ENGINEER and OWNER against liability from damages because of injuries, including death, suffered by any person or persons other than employees of ENGINEER, and liability for damages to property, arising from or growing out of ENGINEER's operations in connection with the performance of this Agreement.

Such insurance covering personal and bodily injuries or death shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for one (1) person, and not less than Three Hundred Thousand Dollars (\$300,000.00) for any one (1) occurrence. Insurance covering damages to property shall be in the sum of not less Three Hundred Thousand Dollars (\$300,000.00) aggregate.

ENGINEER shall also provide and maintain Professional Liability Insurance coverage to protect ENGINEER from liability arising out of the performance of professional services under this Agreement. Such coverage shall be in the sum of not less than \$1,000,000.00.

A signed Certificate of Insurance, showing compliance with the requirements of this Section, shall be furnished to OWNER before any services are performed under this Agreement. Such Certificate of Insurance shall provide for ten (10) days written notice to OWNER prior to the cancellation or modification of any insurance referred to therein. Such Certificates shall terminate after completion of the project.

OWNER shall be named as an "additional insured" party on all insurance policies, except for Worker's Compensation and Professional Liability policies.

SECTION 9. INDEMNIFICATION FOR INJURY AND PERFORMANCE

ENGINEER further specifically obligates itself to OWNER in the following respects, to wit:

The ENGINEER hereby agrees to protect, indemnify and hold harmless the OWNER, their officers, agents, servants and employees (hereinafter individually and collectively

referred to as "Indemnities"), from and against losses, liability or damage of any character, including defense costs, expenses and attorney fees incidental to the defense of such losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including the loss of use resulting therefrom, from any negligent act, error, or omission of the ENGINEER, its officers, employees, or subcontractors, or anyone else for whom ENGINEER is legally liable which are resulting from or caused by the performance of any services called for by this Agreement. In the event the parties are found to be jointly or derivatively negligent or liable for such damage or injury, the indemnification shall be assessed on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

The ENGINEER is not responsible for the actions of the OWNER's contractor or any other party contracting with OWNER to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of the final plans by the OWNER shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and ENGINEERS for the accuracy or competency of their designs, working drawings and specifications, or other documents and services provided by ENGINEER hereunder; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the designs, working drawings and specifications, or other documents and services provided by ENGINEER hereunder; or other documents prepared by ENGINEER, its employees, and subconsultants.

SECTION 10. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

ENGINEER agrees that it is an independent contractor and not an agent of the OWNER, and that ENGINEER is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve OWNER of any responsibility or liability from treating ENGINEER's employees as employees of OWNER for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. ENGINEER further agrees to indemnify and hold OWNER harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of ENGINEER.

SECTION 11. INDEMNIFICATION FOR NON-PAYMENT

To the extent OWNER has paid ENGINEER in full hereunder for same, ENGINEER shall defend and indemnify OWNER against and hold OWNER and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by ENGINEER in performing this Agreement.

SECTION 12. ASSIGNMENT

Neither party shall assign or sublet this Agreement or any part thereof, without the prior written consent of the other party.

SECTION 13. APPLICABLE LAWS

ENGINEER shall comply with all federal, state, county and municipal laws, ordinances, regulations, safety orders, resolutions and building codes applicable to services to be performed under this Agreement.

SECTION 14. DEFAULT OF ENGINEER

In the event ENGINEER fails to comply or is unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within fourteen (14) days after written notice by OWNER to ENGINEER, OWNER may, at its sole discretion without prejudice to any other right or remedy:

- Terminate this Agreement and be relieved of the payment of any further consideration to ENGINEER except for all services determined by OWNER to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for percentage of completion by ENGINEER through such date of termination. In the event of, of such termination, OWNER may proceed to complete the services in any manner deemed proper by OWNER, either by the use of its own forces or by resubletting to others. In either event, the ENGINEER shall be liable for all reasonable, unmitigatable costs in excess of the total contract price under this Agreement incurred to complete the services herein provided for and the costs so incurred may be due or that may thereafter become due to ENGINEER under and by virtue of this Agreement.
- OWNER may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation. The reasonable expense for same may be offset against amounts due the ENGINEER. In such case, ENGINEER shall not be liable with respect to indemnity or otherwise for any such services performed, arranged, or furnished by OWNER. ENGINEER shall not be considered in default of this Agreement for delays in performance caused by acts of the OWNER or other circumstances beyond the reasonable control of the ENGINEER.

SECTION 15. ADJUSTMENTS IN SERVICES

No claims for extra services, additional services or change in the services will be made by ENGINEER without a written agreement with OWNER prior to the performance of such services.

SECTION 16. EXECUTION BECOMES EFFECTIVE

This Agreement will be effective upon execution by and between ENGINEER and OWNER.

SECTION 16-A. VENUE LOCATION

In the event of any dispute or action under this Contract, venue for any and all disputes or actions shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Agreement.

THIS AREA INTENTIONALLY
LEFT BLANK

SECTION 17. AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements, or stipulation bearing upon the meaning or effect of this Agreement, which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

Services not specifically included in this scope of work are considered to be Additional Services and will only be performed through a supplemental agreement to the Contract. These services include, but are not limited to:

1. Preparation or review of environmental assessments, impact statements, and permits; assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact.
2. Services resulting from significant changes in the general scope, extent, or character of the project or scope of work, and revising previously accepted studies, reports, design documents, or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports, or documents, or are due to any other causes beyond Engineer's control.
3. Preparing documents for alternate bids requested by Owner for Contractor(s)' work or documents for out-of-sequence work.
4. Furnishing services resulting from the award of more than one prime contract for construction, materials, or equipment.
5. Assistance in connection with bid protests, re-bidding or re-negotiating contracts for construction, materials, equipment, or services.
6. Providing any type of property surveys or related engineering services needed for the transfer of interests in real property; field surveys for construction purposes; engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys. Preparation of temporary and/or permanent easements, right of way acquisition documents, and construction staking.
7. Preparing to serve or serving as an Engineer or witness for Owner in any litigation, arbitration, or other legal or administrative proceeding.
8. Revisions, additions, and changes to design(s) due to citizen advisory or oversight groups following acceptance by the Owner of the 100% level plan and contract documents.
9. Services in connection with work directive changes and change orders to reflect changes requested by Owner.
10. Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by Contractor; and services after the award of contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.
11. Evaluating an unreasonable or extensive number of claims submitted by Contractor or others.
12. Preparation of Federal Emergency Management Agency submittals, U.S. Army Corps of Engineers Section 404 Permit submittals, and Environmental Protection Agency storm water permit documents.

13. Drainage, water, and wastewater designs, analysis, or studies.

14. Any services not specifically stated in this proposal.

SECTION 18. WRITTEN NOTICES

All notices, demands and communications hereunder shall be in writing and may be served or delivered personally upon the party for whom intended, or mailed to the party to whom intended at the address set forth on the signature page of this Agreement. The address of a party may be changed by notice given pursuant to this Section.

SECTION 19. GENDER AND NUMBER

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular numbers shall include the plural conversely.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the _____ day of August, 2004.

OWNER:
TOWN OF ADDISON, TEXAS

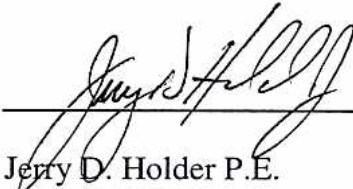
By
:

Ron Whitehead, City Manager
5300 Beltline Road
P.O. Box 9010
Addison, Texas 75001-9010

Witness:

ENGINEER:
HNTB CORPORATION

By
:



Jerry D. Holder P.E.
Associate Vice President
5910 Plano Parkway, Suite 200
Plano, Texas 75093

Witness:

**EXHIBIT A - FEE PROPOSAL
BELTLINE ROAD REHABILITATION
HNTB CORPORATION**

TASK	Project Manager	Senior Engineer	Engineer II	Engineer I	CADD Technician	Secretary/ Clerical	Total
PRELIMINARY ENGINEERING PHASE							
Two internal meetings	6	6	2			2	16
One kick-off meeting with Owner's Staff	2	2				2	6
Field investigation & Pavement Assessment	6	8	8	8		2	32
Base Map Research and Development		4	4	4	32	2	46
Preliminary Engineering Summary & opinion of probable construction cost	8	12	4		12	4	40
One preliminary design meeting with Owner's staff	4	4			4	1	13
DESIGN PHASE							
Two internal meetings	8	8	2			2	20
Contract Documents							
Cover (1)	2	2			4		8
General Notes (2)	6	10			6	2	24
Project Layout (2)		4		8	12		24
Typical Sections (1)	2	6	4		16		28
Rehabilitation Plan (12) (40 scale)	8	20	40	20	60		148
Traffic Control Phasing and Details (6)	12	12	20	32	40		116
Striping & Signing (6)	2	4	12	4	24		46
Special Details - Misc. (2)	2	4	8	12	16		42
Standard Details - Roadway, Utility, etc. (3)	4	8	8		20		40
Quantities & update estimate	2	6	8	8	4		28
Project Documents & preparation of specifications	8	40	8			24	80
Public information meetings	16	16				2	34
Quality Assurance/ Quality Control	16	4					20
Bidding, plotting, precon mtg.	16	16				16	48
Subtotal Hours	130	196	128	96	250	59	
Rates	\$57.00	\$48.00	\$40.00	\$36.00	\$28.00	\$19.00	
Total Direct Labor	\$7,410.00	\$9,408.00	\$5,120.00	\$3,456.00	\$7,000.00	\$1,121.00	\$ 33,515.00

**EXHIBIT A - FEE PROPOSAL
BELTLINE ROAD REHABILITATION
HNTB CORPORATION**

TASK	Project Manager	Senior Engineer	Engineer II	Engineer I	CADD Technician	Secretary/ Clerical	Total
Indirect Labor and Overhead	\$ 11,930.10	\$ 15,146.88	\$ 8,243.20	\$ 5,564.16	\$ 11,270.00	\$ 1,804.81	\$ 53,959.15
Subtotal							\$ 87,474.15
Profit							\$ 13,121.12
EXPENSES							
Direct Expenses (Reproductions, delivery, and postage)							\$ 1,750.00
Subtotal Expenses							\$ 1,750.00
Total Labor and Expenses - Design Phase							\$ 102,345.27
CONSTRUCTION SERVICES PHASE							
Construction Engineering and Inspection, Project Close Out	300	40	0	0	24	20	384
Subtotal Hours	300	40	0	0	24	20	1243
Rates	\$60.00	\$48.00	\$40.00	\$36.00	\$28.00	\$19.00	
Total Direct Labor	\$18,000.00	\$1,920.00	\$0.00	\$0.00	\$672.00	\$380.00	\$ 20,972.00
Indirect Labor and Overhead	\$ 28,980.00	\$ 3,091.20	\$ -	\$ -	\$ 1,081.92	\$ 611.80	\$ 33,764.92
Subtotal							\$ 54,736.92
Profit							\$ 8,210.54
EXPENSES							
Miscellaneous Expenses							\$ 1,800.00
Direct Expenses (Reproductions, delivery, and postage)							\$ 500.00
Vehicle Mileage; 2400 miles @ \$0.40 per mile; CS Phase							\$ 960.00
Subtotal Expenses							\$ 3,260.00
Total Labor and Expenses - Construction Services Phase							\$ 66,207.46
Total Project Labor and Expenses							\$ 168,552.73

Council Agenda Item: #R20

SUMMARY:

This item is for Council authorization for the City Manager to enter into a Contract Agreement with TXU Electric Delivery for the relocation and installation of electrical services in connection with the extension of Arapaho Road, Phase III, from Addison Road to Surveyor Blvd.

FINANCIAL IMPACT:

Budgeted Amount: Not specifically budgeted

Cost: \$282,948.00

Source of Funds: Funds are available from the Arapaho Road Capital Project Fund.

BACKGROUND:

Of the many aspects relating to the Arapaho Road, Phase III construction project, the relocation of electric utilities is a substantial undertaking. In accordance with the attached agreement with TXU Electric Delivery, the Town of Addison's contractor will install conduit for services that will be relocated during construction. TXU Electric Delivery will pull wires through this conduit and perform other relocation of overhead electric facilities within the project site. Money had been allocated to accommodate funding requirements for this portion of the project and it is within the existing budget limits.

RECOMMENDATION:

Staff recommends that the City Manager be authorized to sign this agreement with TXU Electric Delivery in the amount of \$282,948.00.

Steve Chutchian

From: JDAVIS4@txued.com
Sent: Tuesday, August 03, 2004 9:59 AM
To: Steve Chutchian; Mike Murphy
Subject: BREAKOUT OF COST FOR TXU ED RELOCATION ON ARAPAHO ROAD PHASE III

Mike and Steve,

The following is a breakout of cost for the TXU ED relocation for Arapaho Road Phase III:

(1) \$ 82,570 WR#1992629 : Relocation of all overhead wires crossing Arapaho Road between Surveyor and Midway to underground, relocation of overhead service to Charter Furniture on west side of Midway to underground, and relocation of one pole just west of Arapaho and Addison Road intersection.

(2) \$329,481 WR#2041434 : Cost to relocate overhead wires on east and west sides of Midway to underground in duct bank. This is cost for TXU ED to perform electrical and all civil construction, including the material for and construction of duct bank, two manholes, conduits, and performance of two bores across Midway. The total civil construction cost is \$205,943. The non-civil or electrical portion of the cost is \$123,538.

(3) \$119,103 WR#2008401: Cost to clear Arapaho Road bridge on east and west sides of Midway by increasing height of overhead wires with taller poles.

Total TXU ED cost is the cost of item #1 and the difference in cost between items #2 and #3. This amount is \$282,948. If you have any questions about these costs, please contact me.

Sincerely,
James Davis
Senior Engineer
TXU Electric Delivery Company

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system. .

**Tariff for Retail Delivery Service
TXU Electric Delivery Company**

6.3 Agreements and Forms

Applicable: Entire Certified Service Area
Effective Date: January 1, 2002

Page 2 of 23
Revision: Original

6.3.1 Facilities Extension Agreement

Project Number

WR Number 1992629 and 2041434

Region/District Farmers Branch

This Agreement is made between Town of Addison, hereinafter called "Customer" and TXU Electric Delivery Company, a Texas corporation, hereinafter called "Company" for the extension of Company Delivery System facilities, as hereinafter described, to the following location: crossing Arapaho Road underground at seven locations between Surveyor and Midway Roads from pole line on south side of railroad tracks; underground approximately 400 feet in duct bank on east side of Midway where Arapaho Road bridge crosses Midway Road and crossing Midway north and south of the railroad tracks; and from pole line on east side of Addison Road across Addison Road approximately 100 feet west of intersection with Arapaho Road to relocated pole in Arapaho Road right of way.

The Company has received a request for the extension of: (check all that apply)

☐ **STANDARD DELIVERY SYSTEM FACILITIES TO NON-RESIDENTIAL DEVELOPMENT**

Company shall extend standard Delivery System facilities necessary to serve Customer's estimated maximum demand requirement of _____ kW ("Contract kW"). The Delivery System facilities installed hereunder will be of the character commonly described as _____ volt, _____ phase, at 60 hertz, with reasonable variation to be allowed.

☐ **STANDARD DELIVERY SYSTEM FACILITIES TO RESIDENTIAL DEVELOPMENT**

Company shall extend standard Delivery System facilities necessary to serve:

(Number of lots/units) All-electric residential lot(s)/apartment units, or

(Number of lots/units) Electric and gas residential lot(s)/apartment units.

The Delivery System facilities installed hereunder will be of the character commonly described as _____ volt, _____ phase, at 60 hertz, with reasonable variation to be allowed.

☒ **NON-STANDARD DELIVERY SYSTEM FACILITIES**

Company shall extend/install the following non-standard facilities:

TXU Electric Delivery removes seven overhead services that cross Arapaho Road from Surveyor to Midway and replaces with underground cable. Company installs pads and sets two new padmounted transformers to serve two of these customers, Bulloughs-Lykos and Absolute Systems, who are converting their point of delivery from overhead to underground. Town of Addison supplies and installs at its expense conduit and spore for all six services. Town of Addison also performs all electric work past the company's point of ownership at each service location. Company removes overhead lines on east and west sides of Midway where Arapaho Road crosses, replaces with underground cable, and installs the four overhead/underground transitions at existing or relocated pole locations. Town of Addison reserves the option to perform all civil work associated with the relocation of the overhead wires at the above mentioned Midway crossing to underground, including the duct bank and the two bores across Midway, north and south of the railroad tracks. The transformer pole serving the customers at 15289 Addison Road at the southwest corner of the intersection of Arapaho and Addison Roads will be relocated to clear Arapaho Road and retain its overhead wire attachments until the Addison Road project replaces the overhead wires with underground cable.

ARTICLE I - PAYMENT BY CUSTOMER

At the time of acceptance of this Agreement by Customer, Customer will pay to Company Two hundred and eighty two thousand nine hundred and forty eight Dollars (\$ 282,948) as payment for the Customer's portion of the cost of the

Tariff for Retail Delivery Service TXU Electric Delivery Company

6.3 Agreements and Forms

Applicable: Entire Certified Service Area

Effective Date: January 1, 2002

Page 2 of 23
Revision: Original

extension of Company facilities, in accordance with Company's Facilities Extension Policy, such payment to be and remain the property of the Company.

ARTICLE II - NON-UTILIZATION CLAUSE FOR STANDARD DELIVERY SYSTEM FACILITIES

This Article II applies only to the installation of standard Delivery System facilities.

- a. The amount of Contribution In Aid of Construction ("CIAC") to be paid by Customer under Article I above is calculated based on the estimated data (i.e., Contract kW or number and type of lots/units) supplied by Customer and specified above. Company will conduct a review of the actual load or number and type of lots/units at the designated location to determine the accuracy of the estimated data supplied by Customer. If, within two (2) years after Company completes the extension of Delivery System facilities, the estimated load as measured by actual maximum kW billing demand at said location has not materialized or the estimated number and type of dwelling units/lots at said location have not been substantially completed, Company will re-calculate the CIAC based on actual maximum kW billing demand realized or the number and type of substantially completed dwelling units/lots. For purposes of this Agreement, a dwelling unit/lot shall be deemed substantially completed upon the installation of Company's meter. The installation of a Company meter in connection with Temporary Delivery Service does not constitute substantial completion.
- b. Customer will pay to Company a "non-utilization charge" in an amount equal to the difference between the re-calculated CIAC amount and the amount paid by Customer under Article I, above. Company's Invoice to Customer for such "non-utilization charge" is due and payable within fifteen (15) days after the date of the Invoice.

ARTICLE III - TITLE AND OWNERSHIP

Company at all times shall have title to and complete ownership and control over the Delivery System facilities extended under this Agreement.

ARTICLE IV - GENERAL CONDITIONS

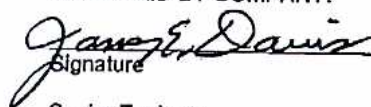
Delivery service is not provided under this Agreement. However, Customer understands that, as a result of the installation provided for in this Agreement, the Delivery of Electric Power and Energy by Company to the specified location will be provided in accordance with Rate Schedule _____, which may from time to time be amended or succeeded.

This Agreement supersedes all previous agreements or representations, either written or oral, between Company and Customer made with respect to the matters herein contained, and when duly executed constitutes the agreement between the parties hereto and is not binding upon Company unless and until signed by one of its duly authorized representatives.

ARTICLE V - OTHER SPECIAL CONDITIONS

The (entity name) agrees that the payment indicated in ARTICLE I of this Agreement shall be made within 30 days of the date the project is completed or the date the invoice is received, whichever is later.

ACCEPTED BY COMPANY:


Signature

Senior Engineer
Title

August 3, 2004
Date Signed

ACCEPTED BY CUSTOMER:

Signature

Title

Date Signed

Council Agenda Item: #R21

SUMMARY:

Enter into an agreement with Kimley-Horn And Associates, Inc for professional engineering services for the upgrade of the Town's traffic signal system software, hardware, and communications infrastructure.

FINANCIAL IMPACT:

Budgeted Amount: \$155,043 (previously approved from DART LAP funds)

Cost: \$196,534.54

Proposed additional \$196,000 to be funded from the Railroad Quiet Zone Project with the remaining \$534.54 from the Street Operations Budget.

BACKGROUND:

This project consists of the design and preparation of construction plans, specifications, and estimates for traffic signal hardware upgrades, a new centralized traffic signal control system, and wireless communications infrastructure for up to 33 intersections; the development, implementation, and fine tuning of coordinated traffic signal timing plans, and services throughout the construction process related to field observations, recommended adjustments, clarifications, and acceptance testing. A copy of the proposed agreement is attached.

Town staff has been successful in gaining both Dallas County and Federal funding for the upgrade of traffic signal equipment citywide. Both of these funding sources require matching funds from the Town. Dallas County will contribute \$196,000 with a \$196,000 match of Town funds, and the Federal Government, through TXDOT, will contribute \$465,129 with a Town match of \$155,043. The total cost of this project will be \$1,012,172.

Council has previously authorized staff to fund the \$155,043 from DART LAP funds. Staff proposes using a transfer of funds from the Railroad Quiet Zone project for the additional \$196,000 required match, and \$534.54 from Street operations.

The requested fee of \$196,534.54 consists of \$104,009 for engineering, \$25,839 for construction administration and \$66,687 signal timing.

The approval of the agreement with Kimley-Horn and associates begins this two-year project.

RECOMMENDATION:

Staff recommends the City Manager be authorized to sign this agreement with Kimley-Horn and Associates for \$196,534.54.

**CONTRACT FOR A CONSULTANT
AN AGREEMENT BETWEEN THE TOWN OF ADDISON, TEXAS
AND KIMLEY-HORN AND ASSOCIATES, INC., DALLAS, TEXAS
FOR TRAFFIC SIGNAL SYSTEM UPGRADE**

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF DALLAS §

THIS AGREEMENT, entered into as of the _____ day of _____, 2004, by and between the TOWN OF ADDISON, Dallas County, Texas, (hereinafter called "Town"), and Kimley-Horn and Associates, Inc., (hereinafter called Consultant);

W I T N E S S E T H:

That, WHEREAS, the Town desires to engage the Consultant to render professional engineering services for the upgrade of the Town's traffic signal system software, hardware, and communications infrastructure.

The project consists of the design and preparation of construction plans, specifications, and estimates for traffic signal hardware upgrades, a new centralized traffic signal control system, and wireless communications infrastructure for up to 33 intersections; the development, implementation, and fine-tuning of coordinated traffic signal timing plans, and services throughout the construction process related to field observations, recommended adjustments, clarifications, and acceptance testing.

NOW, THEREFORE, for and in consideration of the above and foregoing premises, the mutual covenants, conditions and obligations hereof, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town and Consultant hereby do mutually agree as follows:

I. Employment of Consultant: The Town hereby agrees to engage the Consultant, and the Consultant hereby agrees to perform the services hereinafter set forth.

II. Scope of Services: Professional services to be performed by the Consultant are included in Exhibit B.

III. Conflict of Interest: The Consultant hereby represents and covenants that neither it nor any of its employees or representatives, has or shall have, directly or indirectly, any agreement or arrangement with any party that would constitute a conflict of interest in regard to the work being performed by the Consultant for the Town during the terms of this agreement. Consultant will inform the Town of other assignments undertaken on behalf of neighboring communities or governmental agencies that may constitute a conflict of interest.

IV. Indemnity and Liability: The Consultant agrees the Town of Addison will not be held liable for any personal or real property damages occurring from wrongful acts of the Consultant or its employees, agents, engineers, consultants, contractors, subcontractors, or any person or entity for whom Consultant is legally liable, during the tenure of said agreement.

Consultant agrees to use its professional skill, judgment and abilities in the performance of its services hereunder, and Consultant shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in the metropolitan Dallas, Texas area, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and

other work and materials furnished under this Agreement. Without in any way limiting the foregoing or any other provisions of this Agreement, Consultant shall be liable to the Town for any and all damages, injuries, liability, or other harm of whatever nature to the extent caused by or resulting from any negligent, grossly negligent, or intentionally wrongful acts, errors, or omissions of Consultant, or Consultant's directors, partners, officers, employees, agents, contractors, subcontractors, or any person or entity for whom Consultant is legally liable, in the provision of its services under this Agreement, and for other breaches by Consultant to the extent Consultant is negligent, grossly negligent, reckless, or intentionally wrongful in its performance of professional services under this Agreement.

V. General Indemnity: The Consultant agrees, to the fullest extent permitted by law, to indemnify and save the Town harmless from and against all losses, liability, claims, demands, fines, expenses, fees, lawsuits, judgments, damages, and causes of action to the extent caused by the negligent, grossly negligent, reckless or intentionally wrongful act, error, or omission in the performance of professional services under this agreement by the consultant, its officers, agents, employees, consultants, or subconsultants or any person or entity for whom the consultant is legally responsible. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

VI. Entirety of Agreement: This agreement consists of this document, upon which the parties have affixed their signatures, and the Exhibits to this Agreement which are specifically incorporated herein by reference. This agreement as so constituted is the entire agreement between the parties, with respect to the subject matter hereof, and supersedes all other previous statement, communications, or agreements, whether oral or written. No modification, alteration, or waiver of any provision hereof shall be binding upon the parties unless evidenced in writing and signed by both parties.

VII. Termination of Contract: The Town or Consultant may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Consultant shall cease all work and labor being performed under this Agreement immediately upon its giving or its receipt of the notice of termination. In the event of such termination, all finished or unfinished documents, and other materials (in whatever form or format), prepared by or for Consultant under this Agreement shall be the property of the Town, and Consultant shall promptly deliver to the Town all such documents and other materials. If this Agreement is terminated as provided herein, Consultant shall be paid for all work previously authorized by the Town and properly performed prior to the effective date of the notice of termination; in connection therewith, the Consultant fee would be paid in an amount which bears the same ratio to the total compensation as the services actually and properly performed bears to the total services of the Consultant covered by this contract.

In the event of termination, the parties shall have their remedies at law, in equity, or otherwise as to any rights and obligations between them. All obligations arising prior to the termination or expiration of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Consultant and the Town shall survive the cancellation, expiration or termination of this Agreement. Any rights and remedies either party may have with respect to the other arising out of the performance of services during the term of this agreement shall survive the cancellation, expiration or termination of this Agreement.

VIII. Time of Performance: The schedule for completion is included in Exhibit C. Time is of the essence of this Agreement, however, the Town agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. In addition, if the delays resulting from any such causes increase the cost or time required by the Consultant to perform its services in an orderly and efficient manner, the Consultant shall be entitled to an equitable adjustment in schedule and/or compensation.

IX. Compensation: Payment information is included in Exhibit E.

X. Personnel: The Consultant represents that it has or will secure at its own expense all personnel required to perform the services covered by this Agreement.

XI. Data and Assistance to be Furnished to Consultant: It is agreed that the Town of Addison will provide, as available, any past Project location documents and review comments from the Town staff as delineated in Exhibit A.

XII. Ownership and Use of Materials; Submission of Materials: All documents and other materials (in whatever form or format) prepared by or for the Consultant in connection with this Agreement shall be and become the property of the Town upon completion of the work (or upon the earlier termination of this Agreement) and payment in full of all monies due to the Consultant for work properly performed. The Town shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any such documents, reports, data, or other materials prepared under this Agreement. The Town acknowledges the Consultant's documents or materials as instruments of professional service.

Any drawings, plans, specifications or other documents or records prepared by the Consultant in connection with this Agreement shall be submitted to Client for Client's review and consideration, and the same shall comply with all applicable laws, statutes, ordinances, codes and regulations. Notwithstanding the Client's approval of any of such drawings, plans, specifications or other documents or records, the same shall be sufficient and adequate for the Project for which the same are prepared. Approval by the Client of any of the Consultant's designs, working drawings, specifications, or other documents or work pursuant to this Agreement shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of such designs, working drawings, specifications or other documents and work, nor shall such approval be deemed to be an assumption of or an indemnification for such responsibility or liability by the Client for any defect, error or omission in the designs, working drawings, specifications or other documents or work prepared by Consultant, its employees, subcontractors, agents and consultants. In the event it is determined that any drawings, plans, specifications or other documents or records are defective, the Consultant shall promptly correct any defective designs or specifications furnished by the Consultant at no cost to the Client. The Client's approval, acceptance, use of or payment for all or any part of the Consultant's services hereunder, or the Client's acceptance or use of all or a portion of the Project, shall in no way alter the Consultant's obligations or the Client's rights hereunder.

XIII. Independent Contractor: Consultant certifies that the firm is an independent contractor, and none of its contractors, employees, agents, or independent workers shall be deemed an employee of the Town of Addison for any purpose whatsoever. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

XIV. Insurance. During the term of this Agreement, the Consultant shall comply with the following minimum insurance requirements:

- (a) The Consultant shall procure and maintain, as required by Texas law, at its sole expense during the continuance of this Agreement a policy of **Workers' Compensation Insurance** for the protection of its employees, including executive, managerial, and supervisory employees, engaged in all operations hereunder.
- (b) The Consultant shall procure and maintain at its sole expense during the continuance of this Agreement a policy of **commercial general liability coverage** with combined limits of not less than \$1,000,000, insuring against claims for personal injury or property damage. The Consultant shall cause the Town of Addison, Texas to be designated as an additional insured.

(c) The Consultant shall procure and maintain at its sole expense during the continuance of this Agreement and during the period of any statutes of limitations applicable thereto a policy of **professional liability insurance** with limits of not less than \$1,000,000 insuring against claims for errors and omissions by officers and employees of the Consultant. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement.

(d) The Consultant shall procure and maintain at its sole expense during the continuance of this Agreement a policy of **automobile liability insurance** with bodily injury coverage of at least \$1,000,000 for each individual and \$1,000,000 for each accident and property damage coverage of at least \$200,000. The Consultant shall cause the Town of Addison, Texas to be designated as an additional insured.

(e) At the time of execution of and during the continuance of this Agreement, the Consultant shall deposit with the Town current certificates evidencing the policies and endorsements set forth above and shall provide the Town with at least thirty (30) days' written notice prior to the modification or cancellation of any insurance policy required in this Agreement. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the workers compensation and all liability policies. All insurance policies, which name the Town of Addison, Texas as an additional insured must be endorsed to read as primary coverage regardless of the application of other insurance. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates evidencing professional liability insurance coverage shall be furnished the Consultant annually during this Agreement and for three years thereafter.

XV. Consultant shall have no power to and shall not assign, transfer, or otherwise convey its interest, rights, duties, or responsibilities in this Agreement or any part thereof without the prior written consent of Town; provided, however, that this shall not prevent Consultant from retaining such independent professional associates and consultants as Consultant may deem appropriate to assist in the performance of its services. Unless specifically stated to the contrary in any written consent to an assignment or transfer, no assignment or transfer will release or discharge the assignor from any duty or responsibility under this Agreement. Any subcontractor(s) retained or hired by the Consultant shall maintain insurance coverage equal to that required of the Consultant.

XVI. In the event of any action under this agreement and authorization, venue for all causes of action shall be instituted and maintained in Dallas County, Texas (state court) or in the northern district of Texas (federal court), as the case may be. The parties agree that the laws of the State of Texas shall apply to the interpretation, validity and enforcement of this Agreement, and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Agreement.

XVII. Consultant acknowledges that the project for which its services are being provided is a public project of the Town of Addison, Texas and is for a public purpose, and that the property on which the project is to be constructed, the improvements to be constructed thereon, and the funds used by Town in connection therewith are exempt from the filing and enforcement of any liens thereon or with respect thereto and from forced sale. For the consideration set forth herein, Consultant waives and releases any lien, or claim or right of such lien, which Consultant has or may have in connection with the services on or in connection with such property, improvements, and funds and this Agreement.

XVIII. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

This Agreement shall not create any rights or benefits to parties other than Consultant and Town.

XIX. All notices, demands, or requests from one party to another shall be personally delivered or sent by United States mail certified, or registered, return receipt requested, postage prepaid, to the addresses stated below:

To Consultant:

Brian Shewski, P.E.
Project Manager
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251

To Town:

16801 Westgrove Drive
Addison, Texas 75001-5190
Attn: Director of Public Works

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee (i) if by hand delivery, at the time of delivery, or (ii) if mailed, seventy-two (72) hours after the deposit of same in any United States mail post office box. The addresses and addressees for the purpose hereof may be changed by giving notice of such change in the manner herein provided for giving notice.

XX. The recitals to this Agreement are incorporated herein.

XXI. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

XXII. The officers and/or agents of the parties hereto signing this Agreement are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures, the date and year first above written.

ATTEST:

TOWN OF ADDISON, TEXAS

BY _____

CONSULTANT

BY _____
AUTHORIZED OFFICER

EXHIBIT A. SERVICES TO BE PROVIDED BY THE TOWN

In order to expedite this Project, the following information and assistance will be provided to the CONSULTANT by the TOWN:

- (1) Electronic copies (CADD or Microstation) of available intersection layouts including proposed improvements; utilities; right-of-way information; and; paving and/or street construction plans.
- (2) Hard copies of intersection designs or improvement designs at intersections, that the Town has on file only in that format.
- (3) Aerial planimetrics of intersection.
- (4) Building uses and square footage of development.
- (5) Timely decision making and review of work to permit the CONSULTANT to maintain the mutually agreed upon project schedule.
- (6) Use of a bucket truck when needed to verify line of sight or perform tests related to communications for the traffic signal system.
- (7) Access to traffic signal controller cabinets.
- (8) Traffic count data previously acquired by the TOWN
- (9) Input of new signal timing plans into the control system, and hard copies of information from the system once it has been input.

EXHIBIT B.

PROFESSIONAL SERVICES TRAFFIC SIGNAL SYSTEM UPGRADE

I. PROJECT DEFINITION, MANAGEMENT AND CONTROL

The CONSULTANT shall perform the following Professional Services relative to the Town of Addison's Traffic Signal System Upgrade project. These professional services shall hereinafter be referred to as the (PROJECT).

Upgrading the TOWN's Traffic Signal System is a three (3) phase process. The first phase, already completed, was the system planning. That phase included a traffic signal feasibility study and intersection hardware improvement recommendations. This PROJECT includes Phase 2 (engineering services) and Phase 3 (construction support services). Phase 2 consists of the design and preparation of construction documents (PS&E) for traffic signal hardware upgrades, a new centralized traffic signal control system, and wireless communications infrastructure for up to 33 intersections. Phase 2 also includes the development, implementation, and fine-tuning of coordinated traffic signal timing plans. Phase 3 includes services throughout the construction process related to field observations, recommended adjustments, clarifications, and acceptance testing.

- A. Kick-off Meeting. Upon notice-to-proceed, the CONSULTANT will meet with the Town to begin the exchange of data to be provided to the CONSULTANT. Also during this meeting, reporting requirements as they relate to invoicing and project status will be reviewed and agreed upon. The CONSULTANT will create a template for the invoice format and provide the template to the TOWN for review. The kick-off meeting will have an approximate duration of two hours and will be held at the TOWN's service center.
- B. Project Control and Management. The CONSULTANT will be responsible for the day-to-day activities of managing the PROJECT within the 22 to 24 month PROJECT duration. Specific activities include coordination of internal resources; subconsultant coordination; review, verification, and approval of subconsultant(s) services; and ongoing reassessments of contract and schedule adherence.
- C. Project Records and Files. The CONSULTANT will develop a project filing system, both for data in hard copy format and for electronic data. This filing system, which will be maintained in the CONSULTANT's offices for the life of the project, will be designed to assure that files can be easily located and retrieved at all times. This filing system will also assure that electronic files are frequently backed up, with duplicate copies stored at a secure, off-site location. One copy of the electronic data will be submitted to the TOWN at PROJECT closure.
- D. Schedule. The CONSULTANT will develop a baseline schedule to depict the PROJECT workflow based on the structure described within this scope of

services. This schedule will present the estimated task durations. If the actual PROJECT schedule deviates from the original schedule, the CONSULTANT will generate a revised schedule to depict actual progress against the original baseline schedule.

- E. Status Reports and Invoicing. Monthly status reports will be prepared and submitted to the TOWN along with invoices. The status reports will contain a concise report of PROJECT progress and contract fulfillment. The report will address technical progress, contract progress, and management related topics. This task will also include the receipt and processing of invoices from project subconsultants. Monthly invoicing will be part of the status report package.
- F. Project Status and Review Meetings. In addition to the reporting requirements outlined above, PROJECT status meetings with the TOWN will help the CONSULTANT maintain schedule and contract adherence. Six specifically called PROJECT status meetings may be necessary over the course of the PROJECT. Two additional meetings are anticipated for the review of PROJECT submittals. The CONSULTANT will prepare agendas, materials, and meeting notes for these meetings.
- G. Quality Assurance. The CONSULTANT will utilize the Kimley-Horn Quality Control and Assurance matrix. The matrix identifies the responsible party and quality reviewer for each deliverable. This task includes steps taken during the PROJECT to monitor the progress of reports, data and PROJECT material for compliance with agreed upon PROJECT deliverable expectations.

II. FIELD DATA COLLECTION / ASSET EVALUATION

This task includes the collection and organization of data by the CONSULTANT for use in other tasks of this project. The specific type, quantity and other requirements of the data to be collected, reduced, and organized by the CONSULTANT are described in the following subtasks.

- A. Compile Base Map Data. The CONSULTANT will compile 1"=40' digital orthophoto base maps and as-built drawings for sites within the project limits. Base maps supplied by the TOWN shall be in PC MicroStation format. These base maps shall include existing and currently under construction traffic control projects within the project limits. The resulting planimetric scale will be one inch equals 40 feet. Specific field data will need to be identified in the field or on TOWN-supplied aerial photography and/or as-builts include existing:
 - Utilities
 - Curb lines
 - Right-of-way
 - Existing communications infrastructure
 - Conduit system (i.e., conduit, cables, and ground boxes)
 - Traffic control cabinets

New aerial photography collected by NCTCOG will be furnished by the TOWN to the CONSULTANT through the standard NCTCOG agreement form.

- B. Existing System Field Verification. The CONSULTANT shall field check pertinent TOWN base map supplied information and the aerials / planimetrics from the previous subtask.
- C. Photographic Summary. The CONSULTANT shall photograph each location where new hardware is anticipated. The photolog will be given to the TOWN at the conclusion of the PROJECT.
- D. Compilation of Design Information. The CONSULTANT shall compile available specifications, standard detail drawings, and other design information from TOWN and TxDOT sources and shall prepare a list of other needed data.
- E. The CONSULTANT, along with sub-consultants will evaluate and document the grounding of the elevated water storage tank to be used as a communications tower.

III. NETWORK MASTER PLAN

- A. Wireless Evaluations / Spectrum Analysis. Field verification of antenna locations, as identified in the data collection task, will be conducted by the CONSULTANT prior to design.

A frequency analysis will be conducted between the selected tower location and up to fifteen (15) signalized intersections.

- B. Network Master Plan. Based on TOWN review and input on the design alternatives, the CONSULTANT shall finalize the communications network master plan. This design will indicate communication routings, loading requirements, communications nodes (if any), and network hardware requirements. This Communications Master Plan will form the basis for detailed plans and specifications preparation in Task IV.

IV. PS&E PREPARATION

The CONSULTANT shall prepare construction documents in a format acceptable for TOWN and TxDOT approval. These construction documents will require TxDOT approval before construction begins.

- A. Base Map Preparation. The CONSULTANT shall prepare base maps for the system layout. The CONSULTANT compiled base maps will provide sufficient detail to facilitate the construction of communications equipment, and will include street names, scale, north arrow, and title blocks. Communication base maps will be prepared at a 1"=200' scale. All plans shall be prepared on 11" x 17" sheets. Underground utilities will be identified on the plans for locations with new foundation installations. All plans shall be prepared on 11" x 17" sheets.
- B. Preparation of Plans. Layout sheets shall be prepared in accordance with the latest applicable standards and procedures of the TOWN including use of Computer Aided Drafting and Design (CADD) systems. Final copies of sheets prepared in CADD shall be furnished to the TOWN on a recordable CD or DVD in PC MicroStation format. The CONSULTANT will develop up to three detail standard drawings not covered by the TOWN's or TxDOT's standard detail drawings. A sample plan sheet will be provided to the TOWN for their review and approval. It will illustrate how a typical plan sheet will look depicting line styles, station line, recommended symbology for the field elements, conduit/cable schedule, conduit and junction box symbols, etc. The CONSULTANT will incorporate TOWN comments into the plan sheets.

New traffic control and/or communications hardware necessary for the operation of the traffic control system will be indicated on plan layout sheets with a label or special symbol. This will include the addition of video detection at six (6) Midway intersections. The layout sheets shall indicate a north directional arrow and a bar scale. Pertinent existing features and any items removed or relocated shall be indicated on the layout sheets.

In general, the plans will be organized as follows:

- Title Sheet;
- Supplemental Project Location Layout Sheet;
- General Notes and Specification Data Sheets;
- Estimate and Quantity Sheets;
- Quantity Summary Sheets;
- Electrical Service Data;
- Traffic Control Plan Sheets;
- Traffic Control Plan Standards;
- Barricade and Construction / Work Zone Standards;
- Intersection Traffic Control and/or Communication Layouts;
- Electrical Details;
- Traffic Signal Pole Standards;
- Traffic / Traffic Control System Details.

Layouts prepared by the CONSULTANT, shall be submitted for review and comment by the TOWN at the following stages of development:

1. 30% Plans Review. Preliminary plans showing title sheet and design layout including street names, legend, scale, north arrow, preliminary equipment locations, preliminary communications routing, preliminary

traffic control plan and construction sequence plan. A total of five plan packages will be submitted at the 30% review stage.

2. 75% Plans Review. Preliminary plans showing title sheet, general notes, special/standard detail drawings, as well as a design layout including street names, legend, scale, north arrow, equipment locations, preliminary traffic control plan and construction sequence plan, communications sizing and routing, power distributions, and right-of-way.

Cabling-conduit design will be conducted as follows:

- determine cable routing and terminations
- determine cable size
- establish conduit sizing and location
- prepare hub location designs (as appropriate)
- prepare wireless equipment communication location design (as appropriate)
- field check communications conduit routing and resolve utility conflicts, drainage issues, landscape, etc.

The CONSULTANT will meet with the TOWN and conduct a field review of the plan layouts. The total number of plan packages for the 75% submittal shall be six.

3. 95% Plans Review. 95% plans will incorporate appropriate review comments from 75% plans review. In addition, these plans will include a project summary sheet (quantity summary) and a construction time estimate.

Initial wireless connectivity schematics depicting interconnect recommendations will be developed. The total number of plan packages for the 95% submittal shall be six. These plans will be submitted to both the TOWN and TxDOT for review and approval.

4. 100% Final Plans. Final plans will incorporate appropriate review comments from all prior plan reviews. In addition, these plans will include a project summary sheet (quantity summary) and an Engineer's seal. The final PS&E submittal shall include:

- One set of 11" x 17" plan sheets on 4 mil-double matte standard mylar, signed, sealed and dated by a Professional Engineer registered in the State of Texas;
- Ten copies of complete 11" x 17" plans on paper;
- Six copies of general notes;
- Six copies of Special Specifications;
- One hard copy and one electronic copy of the Engineer's estimate of probable cost;
- A construction time estimate.

These items will be submitted to both the TOWN and TxDOT for review and approval.

The CONSULTANT shall establish target dates on which the plans shall be submitted for review at the above stages of development. Plans shall be arranged per the TOWN published guidelines. The CONSULTANT shall complete the revisions prior to the next submittal deadline and inform the TOWN when the revisions on the checklist have been completed. One meeting is anticipated for each of the submittals.

Major revisions requested after the 100% review stage will be negotiated with the TOWN. Changes to quantities, item numbers, and notes shall be considered as minor changes and may be required at any time prior to the bid letting.

- C. Preparation of Specifications and Special Provisions. This task involves the preparation of general notes, specifications, special specifications, and provisions that will be included in the construction contract bid documents as supplemental special provisions. Specification documents shall be prepared in Microsoft Word and an electronic copy of all document files shall be submitted to the TOWN.

The CONSULTANT shall prepare specifications for the procurement and installation of system elements for which design requirements are to be established and are not already developed by the TOWN. The final specifications will include:

- Traffic control system hardware and software functional requirements;
- Communications equipment, including spread-spectrum radio equipment.

Two copies of the specifications prepared by the CONSULTANT for each bid package shall be submitted for review and comments by the TOWN at the following stages of development:

1. Basic organizational outline with description of section content.
Submit with 30% plans review.
2. Preliminary specifications, special specifications, and general notes.
Submit with 75% plans review.
3. Final specifications, special specifications, and general notes.
Submit with 95% plans review.
4. Final specifications, special specifications, and general notes.
Submit with 100% plans review.

- D. Preparation of Estimates. The CONSULTANT shall prepare an opinion of probable construction costs for the 30%, 75%, 95% and 100% construction packages as specified in the plans and specifications. These cost estimates shall include a total for items contained in the bid documents and an individual unit cost estimate for each pay item. The final estimates submitted to the TOWN shall be prepared with Estimator and an electronic copy of all spreadsheets shall be provided on a recordable compact disc. The CONSULTANT shall determine the estimated cost of specialty items.

- E. Preparation of Bid Documents. The CONSULTANT will assemble the bid document package using the TOWN's standard documents (general provisions, administrative specifications, contract, bond forms, etc.) It is understood that these standard documents will be provided to the CONSULTANT in electronic format.

V. CONSTRUCTION CONTRACT ADMINISTRATION

- A. Pre-construction Conference. Prior to the commencement of any of the field work associated with the construction package, the CONSULTANT will prepare for and conduct one (1) pre-construction conference. The CONSULTANT will assist in answering design questions about the plans, specifications, and estimates.
- B. Site Visits to Observe Construction. The CONSULTANT will provide on-site construction observation services during the construction phase of the project. For budgetary purposes, visits to the PROJECT will be as directed by the TOWN in order to observe the progress of the work. Such visits and observations by the CONSULTANT are not intended to be exhaustive or to extend to every aspect of the contractors' work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the work based on the CONSULTANT's exercise of professional judgment. Based on information obtained during such visits and such observations, the CONSULTANT will determine if contractor's work is generally proceeding in accordance with the Contract Documents, and the CONSULTANT shall keep the TOWN informed of the general progress of the work.

For budgetary purposes relative to construction observations, it is assumed that the CONSULTANT will not have to expend more than forty-eight (48) person-hours of effort.

- C. Recommendations with Respect to Defective Work. The CONSULTANT shall recommend to the TOWN that contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, the CONSULTANT believes that such work will not produce a completed PROJECT that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed PROJECT as a functioning whole as indicated in the Contract Documents. For budgetary purposes relative to recommendations with respect to defective work, it is assumed that the CONSULTANT's will not have to spend more than twelve (12) person-hours of effort.
- D. Clarifications and Interpretations. As requested by the TOWN, the CONSULTANT will issue clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents.

The CONSULTANT will evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by the TOWN or its contractor. Such evaluations will be in accordance with the Contract Documents but shall also be subject to the provisions of applicable standards of state or local government entities.

For budgetary purposes relative to clarifications and interpretations, it is assumed that the CONSULTANT will not have to expend more than twelve (12) person-hours of effort.

- E. Change Orders. The CONSULTANT will recommend Change Orders to the TOWN, as appropriate. The CONSULTANT will review and make recommendations related to Change Orders submitted or proposed by the TOWN by its contractor.

For budgetary purposes relative to change orders, it is assumed that the CONSULTANT will not have to recommend more than two (2) Change Orders.

- F. Shop Drawings Review. The CONSULTANT will review and approve or take other appropriate action with respect to Shop Drawings, Samples and other data which the TOWN's contractor or materials supplier is required to submit. However, such review will be only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

For budgetary purposes relative to shop drawings review, it is assumed that the CONSULTANT will not have to expend more than twelve (12) person-hours of effort.

- G. Acceptance Testing - Traffic Control System & Communications. The specifications will require that the contractor or the equipment supplier submit proposed procedures for an acceptance test. These equipment supplier procedures shall exercise all system elements in such manner that the successful provisions of all required functionality are adequately demonstrated. The CONSULTANT will review and approve such proposed test procedures. The CONSULTANT shall also observe such tests as they are conducted and provide a written recommendation to the TOWN as to the success of such acceptance tests.

For budgetary purposes relative to acceptance testing of the traffic control system and the wireless communications subsystem, it is assumed that the CONSULTANT will not have to expend more than thirty-six (36) person-hours of effort.

1. Hardware. The CONSULTANT shall review and approve, subject to TOWN concurrence, system-related hardware components and subsystem Acceptance Test Plans.

2. Software. The CONSULTANT shall review and approve, subject to TOWN concurrence, all System-related software components and subsystem Acceptance Test Plans.

- H. Punch List and Final Acceptance. After notice from the TOWN that it considers the entire work ready for its intended use, the CONSULTANT will accompany the TOWN's inspection personnel on a site visit to determine if the work is complete. Work will be considered complete following satisfactory completion of all items including those identified on a final punch list.

Once all punch list items have been addressed, the CONSULTANT will accompany the TOWN's inspection personnel on a final site visit to determine if the Contractor's work is complete and generally in accordance with the Contract Documents.

The CONSULTANT will not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the work. The CONSULTANT will not have the authority or responsibility to stop the work of the TOWN or any of its contractors.

For budgetary purposes relative to the punch list and final acceptance, it is assumed that the CONSULTANT will not have to expend more than twelve (12) person-hours of effort.

VI. TRAFFIC SIGNAL TIMING

22 of the 33 signalized intersections in Addison are currently part of a coordinated system and have been retimed within the last 3 years. Since the cycle lengths of these coordinated plans are dictated by their coordination with other systems, they are not likely to change. Therefore, the level of retiming for these intersections should include a review of the split times and offsets, mostly through the in-field fine-tuning process. It is assumed that travel time runs will be conducted and evaluated for all of these intersections and that peak-period turning movement counts will need to be performed at up to seven (7) of these intersections, to provide additional information for adjusting split times during peak periods. The intersection of Landmark Place with Landmark and Inwood Road was recently retimed as part of another project, and it should continue to operate as an isolated intersection.

Another ten (10) intersections are not currently part of a coordinated system and should be reviewed in more detail to determine benefits of coordination and to develop new signal timing plans. Five (5) of these intersections are on Quorum north of Belt Line Road and one (1) is adjacent to them on Arapaho. These six intersections can be evaluated together. Three (3) intersections are located in far north Addison, Westgrove and Sojourn, Westgrove and Addison Road, and Sojourn at Addison Road. Benefits of coordination between these intersections should be evaluated, and new timing plans should be developed for each of these intersections, as necessary. The intersection of Arapaho and Surveyor should be considered for coordination with the Surveyor and Belt Line intersection just to the south, and appropriate timing plans should also be developed

for this intersection. It is assumed that travel time runs and peak-period turning movement counts will need to be collected for each of these ten (10) intersections.

- A. Peak Period Turning Movement Counts. Turning movement count (TMC) data will be collected and reduced for up to five (5) time periods at each of the ten (10) intersections where new signal timing plans are to be developed, and at up to seven (7) other intersections where deemed necessary.

It is further assumed that up to seven of the locations will require a two-person count to assure reasonable accuracy. The remaining intersections will be sufficiently minor that one observer can reliably collect the TMC data for each of the intersection approaches.

The TMC data will be tabulated in 15-minute increments, by approach direction (e.g., northbound), and by turning movement (e.g., left, straight, or right). In addition, the number of vehicles not being serviced on the first cycle will be counted once every 15 minutes. The time periods will be defined as follows:

- Weekday AM Peak = four (4) consecutive 15-minute periods (normally 6:45 AM to 8:15 AM) on a non-holiday Tuesday, Wednesday, Thursday, or Friday when school is in session;
- Weekday Daytime Off Peak = four (4) consecutive 15-minute periods (determined after a review of representative sampling of 24 hour counts) on a non-holiday Monday, Tuesday, Wednesday, or Thursday when school is in session;
- Weekday Noon Peak = four (4) consecutive 15-minute periods (normally 11:30 AM to 1:00 PM) on a non-holiday Monday, Tuesday, Wednesday, or Thursday when school is in session;
- Weekday PM Peak = four (4) consecutive 15-minute periods (normally 4:45 PM to 6:15 PM) on a non-holiday Monday, Tuesday, Wednesday, or Thursday when school is in session; and
- Saturday Midday Peak = four (4) consecutive 15-minute periods (determined after a review of representative sampling of 24 hour counts) on a non-holiday Saturday.

It is understood that the beginning and ending times of the AM peak, Off peak, Noon Peak, and PM peak counts may be adjusted based on the results of recording machine count data.

- B. Seven-Day Machine Counts. The Consultant will make up to 6 new seven-day bi-directional machine counts. These counts will be supplemented by the 24-hour counts performed by the Town in 2002. The primary purpose of a seven-day count is to determine the traffic flow variation over the course of a full week. This information is useful in assessing the number of timing plans that are needed and in determining the times during which each such plan should be in operation. The data will be recorded by direction in 15-minute increments and totaled on an hourly basis.
- C. Before and After Travel Time Runs. Both “before” and “after” travel time runs will be made using floating car techniques for up to six roadways during the AM,

Midday, PM, and Weekend peak periods, as well as the weekday off-peak period. To assure a reasonable level of statistical significance, five runs will be made in each direction for each such timing plan period. The “before” runs will be made prior to the implementation of intersection improvements or the development of new signal timing. These runs will establish baseline conditions (speed, delay, and number of stops), determine appropriate progression speeds, areas where queue management is critical, and areas where recurrent congestion may affect progressive traffic movements.

After the implementation of intersection improvements and the fine-tuning and adjustment of the new signal timing, the “after” runs will be made to document the degree of improvement.

- D. Recalculate Controller Interval Timing. The basic controller interval timing parameters (i.e., the minimum greens, the extensions, the vehicular yellows and all-reds, and the pedestrian clearances) are a function of the approach speeds and the roadway and intersection geometry (e.g., street widths, grades, pedestrian crossing distances). These basic timing parameters will be recalculated for the ten (10) intersections for which new timing plans are being developed, with the traffic data collected earlier.
- E. Generate New Coordinated Timing. For those intersections where it is deemed necessary, Synchro™ models will be prepared using existing volumes for the weekday AM peak, noon peak, daytime off-peak, PM peak, and weekend peak. From these models, the CONSULTANT will generate each of the new signal timing plans.
- F. Initial Review and Refinement of the Model Outputs. The CONSULTANT will perform an “on-screen” review of each plan as it was initially produced by means of the Synchro optimization. As an initial enhancement, the CONSULTANT will make refinements that will improve the actual on-street progression. Such reviews and enhancements will be made by an experienced traffic signal timing Engineer.
- G. Review of Recommended Timing Plans. Following such initial enhancements, each timing plan will be submitted for review. Comments from this review meeting will be incorporated into the model.
- H. Timing Sheet Development. The CONSULTANT will develop tabular traffic signal timing sheets that are appropriately customized to accommodate the data entry format of the TOWN’s controllers.
- I. Timing Plan Implementation Assistance. The CONSULTANT will be available to address questions as they may arise or to assist the TOWN during the implementation of the timing plans. Once the timing plans have been input into the system database and before these timing plans are downloaded to the local controllers, the TOWN shall forward a copy of the timing plan database for CONSULTANT review. Discrepancies between the database and the CONSULTANT’s timing plans will be noted and forwarded to the TOWN.

- J. Timing Plan Fine-Tuning and Adjustment. When the new timing is operational, the CONSULTANT will provide qualified staff members for on-site fine-tuning assistance. The CONSULTANT will observe the actual operation of the new timing plans and suggest minor adjustments to improve the operation. It is assumed that TOWN personnel will participate in this process, thereby gaining familiarity with the timing plans.

For budgeting purposes, it is assumed that the CONSULTANT will provide up to 1.0 person-hours of on-site fine-tuning per intersection per time period.

It is also assumed that TOWN personnel will enter all actual timing adjustments. To facilitate the process, it is also assumed that the signal system's central computer will be staffed to enter and download proposed adjustments as they are called in from the field by the CONSULTANT's personnel. After the CONSULTANT has fine-tuned the timing plans, it is also assumed that the TOWN will provide to the CONSULTANT a paper copy of the final timing database. This information will then be used by the CONSULTANT to update the timing model to reflect as-adjusted conditions.

ADDITIONAL SERVICES

KHA will provide, as requested and authorized in writing by the Client, services in addition to those heretofore described. These additional services may include, but not be limited to:

- (1) Construction phase services
- (2) Design of additional system elements (not described in the Scope of Services)
- (3) Environmental analysis and engineering
- (4) Permitting and regulatory assistance
- (5) Preparation for and attendance at public meetings (or other meetings in addition to those described in Task of the Scope of Services).

EXHIBIT C.
Project Schedule

The detailed work schedule developed and submitted as part of this project shall be based on milestones listed below:

Notice to Proceed	August 13, 2004
Kick-Off Meeting	August 24, 2004
Photolog Summary	September 7, 2004
Wireless Evaluation and Routing Plan	September 28, 2004
Communication Master Plan	October 6, 2004
30% PS&E Submittal	November 4, 2004
75% PS&E Submittal	January 18, 2005
Before Conditions Traffic Signal Assessment	February 8, 2005
95% PS&E Submittal	February 22, 2005
100% PS&E Submittal	April 7, 2005
Federal Construction Letter of Authority	May 24, 2005
Advertising for System Contractor	June 7, 2005
Bid Opening	July 8, 2005
Selection and Approval of Contractor	August 5, 2005
Construction Notice-to-Proceed	August 15, 2005
Development of Timing Plans*	March 6, 2006
Finalize Construction	April 17, 2006
Implementation of Timing Plans	May 15, 2006
Fine-tuning of Timing Plans	June 26, 2006
Project Completion	July 21, 2006

* - Assumes completion of Arapaho Road Project in September 2005.

EXHIBIT D. MAN-HOUR ESTIMATE - KHA										as of 5/02/04
TASK DESCRIPTION	KIMLEY-HORN AND ASSOCIATES, INC.								Subtotal Hours	
	PM	Sr. Traffic/ITS Engineer	Sr. Electrical Communications Engineer	Traffic Engineer	EIT	CADD Technician	Accounting Admin	Clerical		
I. Project Management and Control										
A. Kick-off Meeting	4		4	4					12	
B. Project Control and Management	16						2		18	
C. Project Records and Files	8							16	24	
D. Schedule	2			8					10	
E. Status Reports and Invoicing	8						16		24	
F. Project Status and Review Meetings	12	8		8	2	4		2	36	
G. Quality Assurance	8			2					10	
Subtotal =	58	8	4	22	2	4	18	18	134	
II. Field Data Collection										
A. Compile Base Map Data				4	8	12			24	
B. Existing System Field Verification		4	4	8	8	4			28	
C. Photographic Summary					4				4	
D. Compilation of Design Information				2	8				10	
E. Elevated Tank Grounding Evaluation		2	2		2				6	
Subtotal =	0	6	6	14	30	16	0	0	72	
III. Network Master Plan										
A. Wireless Evaluations / Spectrum Analysis			16	4		8			28	
B. Network Master Plan		8	12			8			28	
Subtotal =	0	8	28	4	0	16	0	0	56	
IV. PS&E Preparation										
A. Base Maps		4		4	8	24			40	
B. Preparation of Plans										
1. 30% Plans		18	20		14	44			96	
2. 75% Plans		44	24		44	96			208	
3. 95% Plans		18	2		10	40			70	
4. 100% Plans		6	6		6	12			30	
C. Preparation of Specifications and Special Provisions										
1. Specification Outline		8	4					2	14	
2. 75% Submittal		16	12					12	40	
3. 95% Submittal		6	2					4	12	
4. 100% Submittal		12	6					4	22	
D. Preparation of Estimates										
1. 30% Estimate				6	9	6			21	
2. 75% Estimate				4	9	2			15	
3. 95% Estimate				4	6	2			12	
4. 100% Estimate				2	4	2			8	
E. Preparation of Bid Documents									0	
Subtotal =	0	132	76	20	110	228	0	22	588	
V. Construction Contract Administration										
A. Pre-construction Conference		8	4	4					16	
B. Site Visits to Observe Construction		18	12	18					48	
C. Recommendations with Respect to Defective Work		8	4						12	
D. Clarifications and Interpretations		8	4						12	
E. Change Orders		4	2			4			10	
F. Shop Drawings Review		8	4						12	
G. Acceptance Testing - Traffic Cont. Sys. & Cons.										
1. Hardware		12	8						20	
2. Software		8	8						16	
H. Punch List and Final Acceptance		8	4						12	
Subtotal =	0	82	50	22	0	4	0	0	158	
VI. Traffic Signal Timing										
A. Peak Period Turning Movement Counts				4	8				12	
B. Seven-Day Machine Counts				2	4				6	
C. Before and After Travel Time Runs				8	16				26	
D. Recalculate Controller Interval Timing	2			10	20				32	
E. Generate New Coordinated Timing				24	24				48	
F. Initial Review and Refinement of Model Outputs	12			8	4				24	
G. Review of Recommended Timing Plans	4			8	4				16	
H. Timing Sheet Development				4	8				12	
I. Timing Plan Implementation Assistance	6			6					12	
J. Timing Plan Fine-Tuning and Adjustment		80		80					160	
Subtotal =	0	106	0	154	88	0	0	0	348	
Grand Total Hours =	58	342	164	236	230	268	18	40	1356	
Base Rate =	\$54.33	\$53.85	\$40.14	\$31.73	\$27.64	\$19.47	\$31.73	\$20.19		
Hourly Rates* =	\$ 175.81	\$ 174.26	\$ 129.89	\$ 102.68	\$ 89.44	\$ 63.00	\$ 102.68	\$ 65.33		
Subtotal Labor Costs =	\$ 10,197.04	\$ 59,596.16	\$ 21,302.36	\$ 24,231.96	\$ 20,571.80	\$ 16,885.24	\$ 1,848.20	\$ 2,613.38		
Grand Total Labor Costs =	\$ 157,246.15									
Expenses** =	\$ 18,431.31									
Subtotal KHA Costs =	\$ 175,677.47									
Subtotal Subconsultant Costs =	\$ 20,857.07									
GRAND TOTAL COST =	\$ 196,534.54									

* - KHA hourly rates include a Federally audited overhead rate of 1.8139 and a fixed fee of 15 percent.

** - See Exhibit D-1 for details. (Includes Traffic Data Collection for Signal Timing)

EXHIBIT D-1. EXPENSES - KHA

as of 5/02/04

DIRECT COST ITEMS	UNIT	RATE	QUANTITY	TOTAL COST
<u>Communications</u>				
Postage	LSUM	\$ 10.00	1	\$ 10.00
Express Mail/Delivery	LSUM	\$ 96.00	1	\$ 96.00
Telephone/FAX	LSUM	\$ 75.00	1	\$ 75.00
<u>Privately Owned Vehicle</u>				
Mileage	MILE	\$ 0.375	1600	\$ 600.00
<u>Computer Time</u>	HRS	\$ 17.960	403	\$ 7,245.06
<u>Travel</u>				
Airfare (within State)	TRIP	\$ 225.00		\$ -
Airfare (from outside State)	TRIP	\$ 450.00	2	\$ 900.00
Rental Car	DAY	\$ 75.00	3	\$ 225.00
Per Diem	DAY	\$ 35.00	3	\$ 105.00
Lodging	DAY	\$ 85.00	2	\$ 170.00
Gas, parking, tolls	DAY	\$ 10.00		\$ -
<u>Traffic Data Collection</u>				
7-Day Counts (Bi Directional)	LOCATION	\$ 610.00	6	\$ 3,660.00
Travel time runs (equipped veh.)	MILE	\$ 1.00	1100	\$ 1,100.00
Travel to and from Addison	MILE	\$ 0.375	8190	\$ 3,071.25
<u>Reproduction</u>				
Photocopies (8 1/2" x 11")	EA	\$ 0.05	1000	\$ 50.00
Photocopies (11" x 17")	EA	\$ 0.12	2700	\$ 324.00
Blueline Print (24" x 36")	SF	\$ 2.00		\$ -
Digital Ortho Plotting	SF	\$ 2.50		\$ -
Mylar Plot (24" x 36")	EA	\$ 15.00		\$ -
Mylar Plot (11" x 17")	EA	\$ 6.00	100	\$ 600.00
Vellum Plot (24" x 36")	SF	\$ 15.00		\$ -
Color Plot (8 1/2" x 11")	EA	\$ 2.00		\$ -
Color Plot (11" x 17")	EA	\$ 3.00		\$ -
Film (36 exposures)	EA	\$ 5.00		\$ -
Film Developing (36 exposures)	EA	\$ 5.00		\$ -
<u>Spectrum Analysis Hardware</u>	DAY	\$ 100.00	2	\$ 200.00
GRAND TOTAL COSTS =				\$ 18,431.31

as of 5/02/04

[illegible]

EXHIBIT E. COMPENSATION

The Town agrees to pay the Consultant a lump sum amount of \$196,534.54 for services rendered in conjunction with the scope of work shown in Exhibit B. This contract amount is for the design and construction administration support of the traffic signal system improvements, and for the traffic signal timing improvements. The lump sum fee includes labor costs and direct expenses identified in this agreement as well as items such as local cellular phone, in-house duplicating and blueprinting, facsimile, local mileage, telephone charges, postage, and computer expenses. All permitting, application, and similar project fees will be paid directly by the Client.

In the event the Town requires the additional services of the Consultant not described in Exhibit A, the Town agrees to pay the Consultant an amount equal to 3.236 times salary cost plus reimbursable expenses; both defined as follows:

- A. Salary cost is defined as the cost of salaries plus payroll burden for the number of hours actually devoted to the service authorized by the Town.
- B. Reimbursable expenses are defined as those expenses other than salary cost times 1.10 which are authorized by the Town.

The Consultant shall invoice the Town monthly in amounts based on the Consultant's estimate of percentage of completion. Such invoices shall include a statement of services rendered and the amount owed in connection therewith and the sum of all prior payments for the services set forth in this Agreement. The cumulative amounts of progress payments for the services shall not exceed the fixed price as described herein. Consultant shall not be entitled to any compensation for any services or work not actually performed or for any lost profits as a result of any termination or expiration of this Agreement. The Town agrees to promptly make monthly payment for services provided by Consultant.

Council Agenda Item: #R22

SUMMARY:

This item is for the approval of an Engineering Services Contract with HNTB Corporation, in an amount not to exceed \$55,964.00, for Construction Administration and Bridge Shop Drawing Review on Arapaho Road, Phase III, from Surveyor Blvd. to Addison Road.

FINANCIAL IMPACT:

Budgeted Amount: Not specifically budgeted

Cost: \$55,964.00

Source of Funds: Funds are available from the FY 2004 Bond Sale and from unallocated Bond Fund Proceeds

BACKGROUND:

The third phase of the proposed Arapaho Road extension project extends from Surveyor Blvd. to Addison Road. Construction of this section of Arapaho Road will complete an east-west minor arterial roadway that is necessary to relieve traffic congestion on Belt Line Road. The firm of HNTB completed design of this phase of the project and will continue to perform inspection and general contract administration of the proposed roadway and drainage infrastructure. However, it was determined that certain shop drawing review and contract administration related to the proposed bridge construction should be handled by HNTB. Accordingly, a proposal was submitted that included the following items:

1. Management and Administration
2. Shop Drawing Review
3. Response to requests for Information by the Contractor
4. Site Visits

This agreement will permit an optimum level of inspection and construction administration of the bridge, roadway and drainage components of the project.

RECOMMENDATION:

It is recommended that Council authorize the City Manager to enter into a contract with HNTB Corporation, in an amount not to exceed \$55,964.00, for Construction Administration and Bridge Shop Drawing Review on Arapaho Road, Phase III, from Surveyor Blvd. to Addison Road.

AGREEMENT

THIS AGREEMENT is made by and between HNTB Corporation, hereinafter called "ENGINEER", and the Town of Addison, Texas, hereinafter called "OWNER."

WHEREAS, OWNER desires ENGINEER to perform certain work set forth in Section 2, Scope of Services.

WHEREAS, the ENGINEER has expressed a willingness to perform said services, hereinafter referred to only as "services", specified in said Scope of Services, and enumerated under Section 2 of this Agreement.

NOW, THEREFORE, all parties agree as follows:

SECTION 2. SCOPE OF SERVICES

The following Basic and Additional Services, when authorized in writing by a notice-to-proceed, shall be performed by the ENGINEER in accordance with the OWNER's requirements to provide shop drawing review and project administration during the construction of the Arapaho Road Phase 3 Bridge over Midway Road in Addison, Texas.

A Shop Drawing Review

ENGINEER will review the construction contractor's shop drawing submittals for compliance with and adherence to the plans, standard specifications, special provisions to the standard specifications, and special specifications (CONTRACT DOCUMENTS).

Sole responsibility for correctness of dimensions, details, quantities and safety during fabrication and erection shall remain with the construction contractor. Review of shop drawings, and similar submittals by ENGINEER shall not be construed as his approval of the methods, construction procedures nor facilities to be used in construction of this work.

ENGINEER will not review any temporary structures, including shoring and form work, for structural integrity. ENGINEER will not bear any responsibility for structural integrity of temporary structures including shoring and form work.

The shop drawing submittals will be limited to those specifically called for in the contract documents. The shop drawings required from the standard specifications, special provisions to the standard specifications, and special specifications are limited to the following sections:

SECTION BC – BRIDGE CONSTRUCTION

SECTION SSH – STEEL STRUCTURE HANGERS

SECTION IB – INDUCTION BENDING OF STRUCTURAL MEMBERS
SECTION BELF – BRIDGE EXTERIOR LIGHTING FIXTURES

Shop drawing submittals received by ENGINEER will consist of the following number of copies:

Drawing /Plan Sheets..... 5
Supporting Calculations..... 3
Material Specification,
Manufacture's Literature,
Miscellaneous Documents.....3

Submittals not complying with the above guidelines will be reviewed, however, the submittal response will not be returned until the submittal is made complete.

The shop drawing submittals will be received from OWNER's construction project personnel. The reviewed shop drawing submittal will be returned to OWNER's construction project personnel for further distribution as necessary.

ENGINEER will provide OWNER's construction project personnel a written response detailing the results of the review. The written response will include a cover letter summarizing the results of the review and marked copies of the submitted material. A review stamp indicating the results of the review will be affixed to the first sheet of each packet of submitted material. A representation of the stamp is shown below.

REVIEW

NO EXCEPTIONS TAKEN
MAKE CORRETIONS NOTED
AMEND AND RESUBMIT
REJECTED - SEE REMARKS

☐
☐
☐
☐

Review is only for general conformance with design concept and intent of Contract Documents. Contractor is solely responsible for verifying dimensions, for establishing fabrication processes, means, techniques, sequences and procedures of construction and for coordination of work of all trades. Exceptions taken and noted to information shown does not authorize work resulting in contract cost revisions unless so stated in separate letter or Change Order.



ARCHITECTS ENGINEERS PLANNERS

5910 W. PLANO PARKWAY, SUITE 200
PLANO, TX 75093 972-661-5626

BY: _____

DATE: ____/____/____

ENGINEER will review the submittals and provide a response as quickly as possible; however, ENGINEER will have a minimum of 7 calendar

days from the date when the submittal was received by ENGINEER to provide a response to OWNER's construction project personnel.

ENGINEER will log and track all shop drawing submittals. ENGINEER will provide a written status report of shop drawings in the review process for use during regular construction project meetings.

Submission of shop drawings is anticipated to begin soon after a contract with OWNER has been finalized and cease on or before the construction projects scheduled completion date of October 2005. Lengthening of this duration, in excess of that detailed above, is beyond the scope of this agreement.

B Request For Information (RFI)

ENGINEER will provide consulting services to answer questions concerning the design intent during the construction period.

All RFI's will be forwarded to ENGINEER for response. ENGINEER will log and track all RFI's. ENGINEER will provide a written status report of outstanding RFI's for use during regular construction project meetings.

RFI's concerning value engineering proposals are not part of this agreement. When authorized by subsequent supplemental agreement, ENGINEER will review, evaluate and comment on value engineering proposals submitted to OWNER from the construction contractor.

C Site Visits

ENGINEER will visit the construction site to evaluate construction related issues upon request of OWNER's construction project personnel.

Construction related issues pertaining to construction contractor errors are not part of this agreement. When authorized by subsequent supplemental agreement, ENGINEER will review, evaluate and prepare the necessary plan sheets to resolve the issue.

ENGINEER will not have authority to make modifications to the construction contract or stop the contractor's work. ENGINEER will not be responsible for or have authority over job site safety or construction means and methods.

SECTION 3. PAYMENT

OWNER shall pay ENGINEER for services authorized in writing as properly performed by ENGINEER on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing.

Basis of Compensation

OWNER shall make payment monthly to ENGINEER based upon statements submitted by the ENGINEER for work performed.

Compensation for performing Basic and Additional Services shall be as shown in Exhibit A on a Lump Sum amount of \$55,964.

SECTION 4. RESPONSIBILITIES

OWNER shall perform and provide the following in a timely manner so as not to delay the Services of ENGINEER, and ENGINEER may rely on the accuracy and completeness of the following:

- Authorize ENGINEER in writing to proceed [authorization to proceed is given by the execution of this Agreement].
- Place at ENGINEER's disposal all available information pertinent to the Project, including previous reports, drawings, specifications or any other data relative to the design or construction of the Project.
- Designate in writing a person to act as OWNER's representative, such person to have complete authority to transmit instructions, receive information, and interpret and define OWNER's decisions with respect to ENGINEER's Services for the Project.
- Render decisions and approvals as promptly as necessary to allow for the expeditious performance of ENGINEER's Services.
- Obtain, arrange, and pay for all surveys, advertisements for bids, permits, licenses, easements, rights-of-way, and access necessary for the performance of ENGINEER's Services.
- Make OWNER's facilities available to ENGINEER as required for performance of the Services under this Agreement, and provide labor and safety equipment required for access.
- Require all construction contracts to include provisions requiring Contractors to indemnify OWNER and ENGINEER and requiring Contractors to name OWNER, ENGINEER, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as Additional Insureds on Contractors' liability insurance policies.
- Maintain property insurance on all pre-existing physical facilities.
- Provide a Builder's Risk All-Risk insurance policy for full replacement value for all Project work, which will include, without limitation, coverage for loss due to defects in materials and workmanship and errors in design, and will include OWNER, ENGINEER and Contractor as insureds.

- Give prompt written notice to ENGINEER whenever OWNER becomes aware of any development that does or may affect the scope or timing of ENGINEER's Services, or any defect in the Services of ENGINEER or its subconsultants, or the work of construction Contractors.
- Advise ENGINEER of the identity and scope of services of any independent consultants retained by OWNER to provide services in regard to the Project.

Unless otherwise provided in this Agreement, OWNER shall bear all costs incident to compliance with the above items.

SECTION 5. TIME FOR PERFORMANCE

ENGINEER shall perform all services as provided for under this Agreement in a proper, efficient and professional manner in accordance with the terms of this Agreement.

In the event ENGINEER's performance of this Agreement is delayed or interfered with by acts of the OWNER or others, ENGINEER may request an extension of time for the performance of same as hereinafter provided. If such delay is in excess of 60 days on any one occurrence or a cumulative delay of over 180 days, ENGINEER shall have the right to renegotiate the remainder of this contract. A delay shall be defined as any event caused by others that substantially inhibits the ENGINEER from proceeding with its services on the project. This shall include, but is not limited to, OWNER reviews, right-of-way negotiations and awaiting critical information to be supplied by OWNER or franchised utility companies.

No allowance of any extension of time, for any cause whatever, shall be claimed or made by the ENGINEER, unless ENGINEER shall have made written request upon OWNER for such extension within 14 calendar days after the cause for such extension occurred, and unless OWNER and ENGINEER have agreed in writing upon the allowance of additional time to be made. Provided, however, ENGINEER shall not be considered in default hereunder in delays are caused by reasons beyond its reasonable control.

SECTION 6. DOCUMENTS

All instruments of service (including plans, specifications, drawings, reports, designs, computations, computer files, estimates, surveys, other data or work items, etc.) prepared under this Agreement shall be submitted for approval of the OWNER. All completed instruments of service shall be professionally sealed as may be required by law or by OWNER.

Such instruments of service, together with necessary supporting documents, shall be delivered to OWNER, and OWNER shall have unlimited rights, for the benefit of OWNER, in all instruments of service, including the right to use same on any other work of OWNER without additional cost to OWNER. If, in the event, OWNER uses such instruments of service on any work of OWNER other than that intended in the Scope of Services, defined in Section 2, under those circumstances OWNER hereby agrees to protect, defend, indemnify and hold harmless the ENGINEER, their officers, agents,

servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of service with respect to such other work except where ENGINEER is hired to modify such instrument for such other work.

ENGINEER agrees to and does hereby grant to OWNER a royalty-free license to such instruments of service which ENGINEER may cover by copyright and to designs as to which ENGINEER may cover by copyright and to designs as to which ENGINEER may assert any rights or establish any claim under the design patent or copyright laws. ENGINEER, after completion of the services, agrees to furnish the originals of such instruments of service to the OWNER. ENGINEER may, however, retain copies of any and all documents produced. The license granted herein by ENGINEER shall survive termination of this Agreement for any reason.

SECTION 7. TERMINATION

OWNER may suspend or terminate this Agreement for cause or without cause at any time by giving five (5) days written notice to the ENGINEER. In the event termination is for cause however, such shall be in accordance with section 14 hereof. In the event suspension or termination is without cause, payment to ENGINEER, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by OWNER to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to OWNER.

Should the OWNER require a material modification of this Agreement, and in the event OWNER and ENGINEER fail to agree upon such modification to this Agreement, OWNER shall have the option of terminating this Agreement and the ENGINEER's services hereunder at no additional cost other than the payment to ENGINEER, in accordance with the terms of this Agreement, for the services reasonably determined by OWNER to be properly performed by the ENGINEER prior to such termination date.

ENGINEER may terminate this Agreement upon written notice to OWNER in the event of substantial failure by the OWNER to perform in accordance with the terms of this Agreement. OWNER shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the ENGINEER. In the event the parties cannot agree upon an acceptable cure within a reasonable period of time from the date of notice, ENGINEER may terminate this Agreement.

SECTION 8. INSURANCE

ENGINEER shall provide and maintain Worker's Compensation and Employer's Liability Insurance for the protection of ENGINEER's employees, as required by law. ENGINEER shall also provide and maintain in full force and effect during the term of this Agreement, insurance (including insurance covering the operation of automobiles,

trucks and other vehicles) protecting ENGINEER and OWNER against liability from damages because of injuries, including death, suffered by any person or persons other than employees of ENGINEER, and liability for damages to property, arising from or growing out of ENGINEER's operations in connection with the performance of this Agreement.

Such insurance covering personal and bodily injuries or death shall be in the sum of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for one (1) person, and not less than Three Hundred Thousand Dollars (\$300,000.00) for any one (1) occurrence. Insurance covering damages to property shall be in the sum of not less Three Hundred Thousand Dollars (\$300,000.00) aggregate.

ENGINEER shall also provide and maintain Professional Liability Insurance coverage to protect ENGINEER from liability arising out of the performance of professional services under this Agreement. Such coverage shall be in the sum of not less than \$1,000,000.00.

A signed Certificate of Insurance, showing compliance with the requirements of this Section, shall be furnished to OWNER before any services are performed under this Agreement. Such Certificate of Insurance shall provide for ten (10) days written notice to OWNER prior to the cancellation or modification of any insurance referred to therein. Such Certificates shall terminate after completion of the project.

OWNER shall be named as an "additional insured" party on all insurance policies, except for Worker's Compensation and Professional Liability policies.

SECTION 9. INDEMNIFICATION FOR INJURY AND PERFORMANCE

ENGINEER further specifically obligates itself to OWNER in the following respects, to wit:

The ENGINEER hereby agrees to protect, indemnify and hold harmless the OWNER, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnities"), from and against losses, liability or damage of any character, including defense costs, expenses and attorney fees incidental to the defense of such losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including the loss of use resulting therefrom, from any negligent act, error, or omission of the ENGINEER, its officers, employees, or subcontractors, or anyone else for whom ENGINEER is legally liable which are resulting from or caused by the performance of any services called for by this Agreement. In the event the parties are found to be jointly or derivatively negligent or liable for such damage or injury, the indemnification shall be assessed on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

The ENGINEER is not responsible for the actions of the OWNER's contractor or any other party contracting with OWNER to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of the final plans by the OWNER shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, associates, agents and ENGINEERS for the accuracy or competency of their designs, working drawings and specifications, or other documents and services provided by ENGINEER hereunder; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the designs, working drawings and specifications, or other documents and services provided by ENGINEER hereunder; or other documents prepared by ENGINEER, its employees, and subconsultants.

SECTION 10. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

ENGINEER agrees that it is an independent contractor and not an agent of the OWNER, and that ENGINEER is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve OWNER of any responsibility or liability from treating ENGINEER's employees as employees of OWNER for the purpose of keeping records, making reports or payments of Unemployment Compensation taxes or contributions. ENGINEER further agrees to indemnify and hold OWNER harmless and reimburse it for any expenses or liability incurred under said Statutes in connection with employees of ENGINEER.

SECTION 11. INDEMNIFICATION FOR NON-PAYMENT

To the extent OWNER has paid ENGINEER in full hereunder for same, ENGINEER shall defend and indemnify OWNER against and hold OWNER and the premises harmless from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by ENGINEER in performing this Agreement.

SECTION 12. ASSIGNMENT

Neither party shall assign or sublet this Agreement or any part thereof, without the prior written consent of the other party.

SECTION 13. APPLICABLE LAWS

ENGINEER shall comply with all federal, state, county and municipal laws, ordinances, regulations, safety orders, resolutions and building codes applicable to services to be performed under this Agreement.

SECTION 14. DEFAULT OF ENGINEER

In the event ENGINEER fails to comply or is unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within fourteen (14) days after written notice by OWNER to ENGINEER, OWNER may, at its sole discretion without prejudice to any other right or remedy:

- Terminate this Agreement and be relieved of the payment of any further consideration to ENGINEER except for all services determined by OWNER to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for percentage of completion by ENGINEER through such date of termination. In the event of, of such termination, OWNER may proceed to complete the services in any manner deemed proper by OWNER, either by the use of its own forces or by resubletting to others. In either event, the ENGINEER shall be liable for all reasonable, unmitigatable costs in excess of the total contract price under this Agreement incurred to complete the services herein provided for and the costs so incurred may be due or that may thereafter become due to ENGINEER under and by virtue of this Agreement.
- OWNER may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation. The reasonable expense for same may be offset against amounts due the ENGINEER. In such case, ENGINEER shall not be liable with respect to indemnity or otherwise for any such services performed, arranged, or furnished by OWNER. ENGINEER shall not be considered in default of this Agreement for delays in performance caused by acts of the OWNER or other circumstances beyond the reasonable control of the ENGINEER.

SECTION 15. ADJUSTMENTS IN SERVICES

No claims for extra services, additional services or change in the services will be made by ENGINEER without a written agreement with OWNER prior to the performance of such services.

SECTION 16. EXECUTION BECOMES EFFECTIVE

This Agreement will be effective upon execution by and between ENGINEER and OWNER.

SECTION 16-A. VENUE LOCATION

In the event of any dispute or action under this Contract, venue for any and all disputes or actions shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the interpretation, validity and enforcement of this Agreement.

THIS AREA INTENTIONALLY
LEFT BLANK

SECTION 17. AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements, or stipulation bearing upon the meaning or effect of this Agreement, which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

SECTION 18. WRITTEN NOTICES

All notices, demands and communications hereunder shall be in writing and may be served or delivered personally upon the party for whom intended, or mailed to the party to whom intended at the address set forth on the signature page of this Agreement. The address of a party may be changed by notice given pursuant to this Section.

SECTION 19. GENDER AND NUMBER

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular numbers shall include the plural conversely.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the _____ day of August, 2004.

OWNER:
TOWN OF ADDISON, TEXAS

ENGINEER:
HNTB CORPORATION

By

:

Ron Whitehead, City Manager
5300 Beltline Road
P.O. Box 9010
Addison, Texas 75001-9010

By

:

Jerry D. Holder P.E.
Associate Vice President
5910 Plano Parkway, Suite 200
Plano, Texas 75093

Witness:

Witness:

ARAPAHO ROAD PHASE 3 SHOP DRAWING REVIEW

Description	Number of Sheets	Project Manager	Senior Engineer	Design Engineer	CADD Technician	Clerical	Total
I. General Management and administration	N/A	16	40	24		24	104
II. Shop Drawing Review							
Strands	10	2	5	10	0	0	17
Prestressed Concrete Beams	65	4	16	30	0	4	54
Prestressed Concrete Panels or Permanent Metal Deck Forms	45	3	11	20	0	4	38
Sealed Expansion Joints	9	2	2	4	0	2	10
Arch Ribs	51	6	24	51	0	4	85
Fence	10	2	2	5	0	0	9
Rail	10	2	2	5	0	0	9
Lights	2	0	2	2	0	0	4
III. Request For Information (RFI)							
Design Intent	N/A	16	32	16	4	16	84
V. Site Visits	N/A	4	12	12	0	4	32
Labor Hours	202 Sheets	57	148	179	4	58	446
Labor Rate		\$56	\$46	\$36	\$25	\$19	
Total Direct Labor		\$3,192	\$6,808	\$6,444	\$100	\$1,102	\$17,646
Indirect Labor and Overhead		\$5,139	\$10,961	\$10,375	\$161	\$1,774	\$28,410
Subtotal		\$8,331	\$17,769	\$16,819	\$261	\$2,876	\$46,056
Profit							\$6,908
Expenses							
Printing and Reproduction							\$1,250
Courier, Mailing, & Misc. exp.							\$1,750
Subtotal							\$3,000
Total Labor and Expenses							\$55,964